

# General Terms & Conditions



## 1. General Provisions

1.1. Our general terms and conditions of sale (T&Cs) apply to all agreements, supplies of goods and other services, including consultation services, training, information and similar items, as well as to technical services (maintenance/repair) in accordance with the contract entered into between the customer and us.

Our terms and conditions apply exclusively. We shall not accept any contrary or divergent terms and conditions of the purchaser unless we have expressly agreed to the validity of these in writing; otherwise the purchaser's terms and conditions of business are hereby rejected. Our terms and conditions of sale shall also apply if we fulfil our contractual obligations without reservation in the knowledge of contrary or divergent terms and conditions of the purchaser.

Our terms and conditions only apply in relation to business customers, legal entities under public law or special funds under public law pursuant to section 310 subsection 1 of the German Civil Code (BGB).

Any amendments to the following terms and conditions shall require our written consent or a written agreement in order to be effective.

1.2. We shall hold sole title and copyright to our written quotes, illustrations, designs, calculations and other documentation. These may not be made available to third parties without.

1.3. The information brought to our attention in connection with orders shall not be deemed to be confidential.

1.4. The place of fulfilment for our services and for the purchaser's payment obligation (payment location) shall be our company head office unless otherwise indicated in the relevant contract. This is without prejudice to the statutory regulations regarding places of jurisdiction, unless indicated otherwise based on the special regulation in section 10 subsection 10.2.

## 2. Formation of the contract

2.1. All agreements between us and the purchaser related to the contract and its performance must be made out in writing. Statements and notifications which the purchaser is required to provide to us or a third party and which are relevant in law must be in written form.

2.2. Our quotes and the prices, designs, illustrations, dimensions, weights and other performance data contained in these are non-binding. We shall remain committed to those prices which are expressly designated as binding in our quotes for four weeks from the quote date.

2.3. The purchaser's order represents a binding offer, which we may accept within two weeks by sending an order confirmation (or by delivering the goods). Quotes provided by us previously shall be without obligation in accordance with subsection 2.2. A contract shall only be formed with our written order confirmation.

2.4. If the purchaser orders the goods electronically, then these general terms and conditions of sale shall be saved in reproducible form and sent to the purchaser via e-mail upon request.

2.5. If the price has increased at the time of the service provision as a result of a change in the market price or an increase in fees demanded by third parties involved in the service provision, then the higher price to be communicated in writing prior to the service provision shall be applicable. If this is 20 percent or more above the

agreed price then the customer shall be entitled to withdraw from the contract. This right must be asserted without delay following notification of the increased price.

## 3. Payment terms

3.1. The VAT not included in our quotes and cost estimates will be stated separately in the invoice at the statutory amount on the invoicing date. Packaging costs will be invoiced separately. The agreed price shall be applicable for maintenance and repair orders. Binding price information shall generally be provided in these cases based on a written cost estimate in which all details and the materials required to execute the maintenance or repair work shall be listed in detail with the price information. We shall be bound to any such cost estimate if the purchaser places the maintenance or repair order with us within four weeks following receipt of the cost estimate.

3.2. The purchase price shall be due for payment without deduction within 30 days from the invoice date. Receipt of the payment by us shall be crucial in determining compliance with this deadline. A discount may only be granted by way of a special written agreement. The statutory regulations apply related to the consequences of default of payment.

3.3. The customer shall only have a right of offset if its counterclaims have been determined by force of law, are undisputed, are accepted by us or are synallagmatic with our principal claim. The purchaser shall only be entitled to exercise a right of retention to the extent that the counterclaim that is undisputed or has been determined by force of law is based on the same contractual relationship.

3.4. By way of derogation from section 195 BGB our claims for payment shall lapse in five years. Section 199 BGB shall apply to the start of the limitation period.

## 4. Performance

4.1. Delivery shall be ex works unless otherwise indicated in the order confirmation. Delivery shall be "ex works" in accordance with INCOTERMS 2000.

4.2. If sufficiently certain delivery deadlines or delivery periods have been stated by us or if these are capable of being determined by the purchaser and form the basis for placing the order, any such deadlines or periods shall be deferred or extended for the duration of the relevant delay in the event of strike or in cases of force majeure. The same applies if the customer does not meet any applicable duties to cooperate.

4.3. The start of the delivery period stated by us is contingent upon clarification in full of the technical details of the order along with the receipt of agreed documents and/or advance payments from the purchaser. Compliance with our delivery obligation also requires timely and proper fulfilment of any other obligations by the purchaser. The defence of failure to fulfil the contract remains reserved.

4.4. If the customer is in default of acceptance or if it culpably breaches other duties to cooperate, then we shall be entitled to demand compensation for the damage or loss suffered by us to this extent, including any additional expenditure. More extensive rights or claims remain reserved.

4.5. Provided that the conditions under subsection 4.4. are met, the risk of accidental destruction or of accidental deterioration of the purchase item shall pass to the purchaser at the point in time at which the latter is in default of acceptance or default as a debtor.

4.6. We shall be entitled to withdraw from the contract in the event that we have not received supplies or correct or timely supplies from our own suppliers, and are also at any time entitled to make partial deliveries and provide partial performance in this regard.

4.7. We shall be entitled to withdraw from the contract if the purchaser has filed an application to open insolvency proceedings in relation to its assets, has made a declaration regarding its assets in lieu of an oath according to section 802c ZPO (Code of Civil Procedure) or if the insolvency proceedings regarding its assets have been opened or the opening of the same has been rejected for lack of assets.

## 5. Warranty

5.1. Warranty claims by the purchaser require that the latter has properly fulfilled its duty to examine the goods and provide notification of defects in accordance with section 377 of the German Commercial Code (HGB). The notification of material defects and/or defects of title must be provided in writing without delay (section 377 HGB), and at least within two weeks following the appearance of the defect. The rights under warranty shall cease to exist if the notification is not made within the aforementioned period.

5.2. The seller shall be entitled to select the supplementary performance in accordance with section 439 subsection 1 BGB (improvement or subsequent delivery). We must be provided with the opportunity to provide supplementary performance within a reasonable period in all cases. We shall fulfil our warranty in maintenance or repair orders by implementing improvements. Rights of recourse shall remain unaffected by the previous regulation without limitation. If the improvement fails then the purchaser shall be entitled to withdraw from the contract or to demand a reduction in the price without prejudice to any claims for compensation.

5.3. The costs of the supplementary performance shall be borne by the seller provided that the latter is not subject to disproportionate charges with this. Specifically, claims of the purchaser based on the expenditure required for the purposes of supplementary performance shall be excluded, in particular costs for transportation and travel, labour and materials, to the extent that the expenditure increases because the goods delivered by us are subsequently provided at a different location to the purchaser's establishment, unless provision at this different location is in accordance with the relevant intended usage purpose.

5.4. Assignment of claims for defects against us by the direct purchaser is not permissible.

5.5. Claims for defects shall expire within 12 months from delivery. This also applies to deliveries of used items. The limitation period in the event of recourse against the supplier pursuant to sections 478 and 479 BGB remain unaffected by this. This shall not apply if the claim involves claims for compensation for defects.

5.6. The purchaser does not acquire any guarantees in the legal sense from us.

5.7. In the event of a withdrawal from the contract we shall reimburse the purchase price minus an amount which accounts for the age of the delivery as a ratio of the expected overall operating lifetime of the goods delivered. The statutory regulations related to returns of the goods delivered shall apply in all other respects. Our consent must be obtained before any goods are returned.

5.8. Claims for defects shall not exist for deviations from the agreed properties that are merely negligible, impairment of usability which is merely negligible or natural wear and tear. Any claims under warranty shall cease to exist if our operating or maintenance instructions are not followed, changes are made to the services, parts are exchanged or materials are used which do not correspond with the original specifications. The same shall apply if our services are not used in accordance with the contract or are used together with third-party services or the defect in the service is based on design documentation or other specifications provided by the purchaser.

5.9. With software sales we warrant the conformity of such software with our programme specifications provided that the software is installed on the equipment systems in accordance with our guidelines and is used by the purchaser in accordance with the contract in the combinations specified by us. We also warrant that the software is free from third-party property rights and that there are no other rights in place to our knowledge that restrict or exclude usage in accordance with this agreement. However, claims by the purchaser under warranty shall be excluded if the latter has itself modified the software or has had it modified by a third party, unless the purchaser is able to prove that the modification does not make our analysis and processing efforts considerably more difficult and the defect was inherent in the software upon delivery.

## 6. Liability

6.1. Our liability for breaches of contractual duty as well as based on tort is limited to wilful intent and gross negligence, as well as compensation for typical loss or damage that has been suffered. This does not apply to injury to the purchaser's life, limb or health, claims due to the breach of cardinal duties, i.e. duties that result from the nature of the contract and the breach of which puts the fulfilment of the contractual purpose at risk, or to compensation for damage or loss caused by default in performance (section 286 BGB). We shall be liable for any degree of culpability to this extent.

6.2. We shall also be liable for slight negligence in the event of a breach of essential contractual duties (cardinal duties), but this shall be restricted to the loss or damage that is typical for the contract and can be reasonably foreseen. Liability in the event of default of delivery shall be limited to flatrate compensation for default of 0.5% of the delivery value for each complete week of the default, up to a maximum of 5% of the delivery value.

6.3. The aforementioned exclusion of liability shall also apply to breaches of obligation based on slight negligence of our vicarious agents.

6.4. Claims in accordance with the Product Liability Act shall remain unaffected (section 14 Product Liability Act).

6.5. Liability for loss of data shall be limited to the effort and expenditure which would typically be incurred for regular and risk-appropriate data backups by the purchaser to restore the data. We shall not be liable for any loss or damage resulting from a breach by the purchaser of its obligations as stipulated under 9.4.

6.6. Any further claims by the purchaser shall be excluded.

6.7. Unless liability which is not based on injury to the customer's life, limb or health is excluded for slight negligence, then any such claims shall expire within one year from the emergence of the claim or in the event of claims for damages due to a defect from the

handover of the item delivered. In all other respects the statutory periods shall apply.

6.8. To the extent that our liability for compensation is excluded, then this shall also apply to the personal liability for compensation of our employees, workers, colleagues, representatives and vicarious agents.

### 7. Retention of title

7.1. We shall retain title to all goods delivered until all claims - including future and provisional claims - have been fulfilled along with the balance claims from any current account relationship (goods subject to retention of title), even if payment has already been received for the actual goods. In the event that the purchaser acts in breach of contract - in particular in the event of default of payment - we shall be entitled to recover the original purchase item. Recovery of the item by us shall also represent a withdrawal from the contract. We shall be entitled to turn the delivered goods to account following recovery. The proceeds from turning the goods to account shall be offset against the purchaser's liabilities, minus any reasonable costs involved in this.

7.2. The purchaser may process and resell the goods subject to retention of title in the ordinary course of business pursuant to section 950 BGB provided that it is not in default. The goods may not be mortgaged or assigned as collateral for the duration of the retention of title. If the value of the goods provided to us as collateral exceeds the secured claims by more than 20%, we shall release collateral in whole or in part at our discretion following a request from the purchaser.

7.3. The purchaser shall insure the goods against the usual risks at their replacement value. If maintenance and inspection work is required then the purchaser must carry this out in good time at its own expense.

7.4. Processing shall take place for us as manufacturer without imposing any obligations upon us. We shall be entitled to co-ownership in the new item - which shall be considered to be goods subject to retention of title - at the ratio of the invoice value of the goods subject to retention of title to the new item. The purchaser will hold the goods for us in safekeeping free of charge.

7.5. The purchaser hereby assigns by way of collateral all claims arising related to the goods subject to retention of title, including all balance claims from any current account relationship at their full amount. However, the purchaser shall be entitled to collect these on its own behalf and for its own account unless we revoke the authorisation to collect the claims as a result of default of payment on the part of the purchaser.

7.6. The purchaser must notify us without delay of any mandatory enforcement measures by third parties affecting the goods subject to retention of title, and also provide the documents required for intervention; this also applies to impairments of any other kind. Irrespective of this the purchaser must notify the third parties in advance of the rights existing in relation to the goods. The third party shall be liable for all of the costs incurred by us in this respect. The purchaser shall be liable if the third party is not capable of fulfilling our claims.

### 8. Industrial property rights and copyrights

We shall indemnify the purchaser against all claims of third parties asserting a breach of industrial property rights or copyrights. If third parties assert claims against the purchaser for breach of industrial

property rights or copyrights based on use of the service, the purchaser must notify us without delay, providing the documentation required for the legal defence against this without delay. We reserve the right to all defensive and extrajudicial measures for our legal defence in these cases. The purchaser will support us with this.

In the event that despite all due care, use in accordance with the contract is impaired contrary to section 5, subsection 5.9. through third-party property rights, then without prejudice to the claims to which the purchaser is entitled, we shall be entitled to an extent which is reasonable for the purchaser at its discretion either to amend the contractual performance in such a way that it falls outside the scope of the protected area but at the same time complies with the contractual provisions, or to obtain authorisation which permits it to be used without restriction and without additional costs for the purchaser.

### 9. Rights to software, instruction

9.1. The purchaser shall receive a permanent, non-transferable and non-exclusive licence to the software, its modifications, additions, extensions and associated documentation which is part of our delivery or is delivered subsequently for its own internal operations related to the service. We shall remain the sole holder of the copyrights.

9.2. Simultaneous saving or usage of the software delivered by us on more than one hardware device is not permitted. The purchaser may not modify, copy or otherwise reproduce this software. Production of one backup copy designated as such is permissible.

9.3. The purchaser undertakes to prevent unauthorised access by its employees and other third parties to the software delivered, along with the associated documentation, using appropriate precautions, in particular by storing the original data carriers and the backup copy at a secure location.

9.4. Training and other instruction beyond delivery of the associated documentation and instructions on the fundamental functionality of the goods delivered shall be subject to a charge and will require a separate agreement.

### 10. Applicable law, place of jurisdiction

10.1. The law of the Federal Republic of Germany shall apply exclusively to all legal relations between us and the purchaser; any applicability of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

10.2. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the legal relationship between us and the purchaser shall be our head office. However, we may also bring an action against the purchaser before the courts at its general place of jurisdiction.

### 11. Partial invalidity

In the event that individual provisions in these general terms and conditions of sale are ineffective in part then the terms and conditions shall remain effective in all other respects.

The statutory regulations shall apply instead of the ineffective terms and conditions.