



General Conditions for Delivery and Assembly



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1. Validity and conclusion of contract

- 1.1 Our General Terms and Conditions of Delivery and Assembly shall apply in the most recent version on the date of the respective conclusion of contract for all of our performance and delivery. In addition our service rates apply in the current version at conclusion of the contract. Additionally the special conditions OEM apply for the manufacture and delivery of products by us on order of the customer with this name, brand or other marking as OEM products.
- 1.2 Our General Terms and Conditions of Delivery and Assembly and our service rates, each in the most recent version on the date of the conclusion of contract, also apply for future business with the customer.
- 1.3 The regulations listed under paragraph 1.1. shall apply exclusively unless otherwise specified in contractual agreements. No other provisions or the customer's General Terms and Conditions of Business shall become an element of the content of the contract even if not expressly contested by us.
- 1.4 Our offers are non-binding. Only after receipt of the written confirmation of order, the contract is regarded as concluded. The scope of our performance shall be set down exclusively by our written confirmation of order, including the written appendices thereto.
- 1.5 Supplementary agreements and changes shall only come into effect upon our written confirmation. This shall also apply to the waiver of the aforementioned provision.
- 1.6 Our fulfillment of the contract with respect to parts subject to governmental export regulations shall be subject to the condition that the required licenses are issued to us.
- 1.7 The documents and information delivered and made by us such as pictures, drawings, weights and measures are only binding if we have expressly specified them as an element of contract or make specific reference to them.
- 1.8 We reserve all rights of ownership and copyrights to all supplied information and documents (e.g. samples, cost estimates, drawings, documentation) - including in electronic form; they may not be made available to third parties without our express written consent.
- 1.9 Written form may be replaced by fax, but cannot be replaced by the electronic form pursuant to Sec. 126a German Civil Code or the text form pursuant to Sec. 126b German Civil Code.
- 1.10 These General Terms and Conditions are not intended for use in relation to consumers as defined in Sec. 13 German Civil Code.

2. Prices and payments

- 2.1 Our prices shall apply ex Works exclusive of packaging, loading and additional VAT in the statutory amount.
 - 2.1.a In the case of delivery within the European Union, customer must provide us in good time prior to the contractually agreed delivery date with his VAT identification number as proof of his exemption from VAT. In the event that such notification is not given or not given in good time, we reserve the right to charge the appropriate VAT.
 - 2.1.b In the case of delivery outside of the European Union we are entitled to charge VAT in the statutory amount after delivery if customer does not send us a proof of exportation within one month after shipment.
- 2.2 Cost estimates are only valid if made in writing
- 2.3 Unless otherwise agreed, the customer shall effect the payment within 14 days after receipt of the invoice.

- 2.4 Assembly, repairs and other services are invoiced at the respective current rates that are available from us on request. Work outside the normal working hours is subject to supplementary charges. Travel and waiting times are considered as working time.
- 2.5 Payments are to be made without any deduction to one of our accounts.
- 2.6 The customer may only offset or withhold payment with counterclaims whose legal basis or amount are not disputed or are final and absolute.
- 2.7 The customer's payments shall be due upon receipt of our invoice. The customer shall be in default of payment 14 days after receipt of the invoice without the need for any reminder. In this case, the customer is obliged to pay interest at the rate of 8 percentage points above the respective valid base interest rate. We explicitly reserve the right to assert further damages.
- 2.8 The prices of an offer shall only apply for orders for the full scope of the offered performance.
- 2.9 The customer is entitled to pay by cheque or bank draft if this has been expressly agreed with us. Bills of exchange and cheques will only be accepted on account of payment. Collection and discount expenses shall be borne by the customer.
- 2.10. In exceptional cases, if we have explicitly declared in writing that we agree to partial payments, the balance payments shall become due if the customer is in default with an installment in full or in part for longer than 14 days. A separate reminder is not required.

3. Performance, Transfer of Risk, Acceptance

- 3.1 We reserve the right to reasonable partial performances.
- 3.2 Incoterms 2010 shall be deemed to have been agreed. Unless otherwise agreed, deliveries shall be EXW from the point of manufacture, unless otherwise agreed.
- 3.3 In case of work performance the risk will be transferred to the customer with the acceptance of such work performance. If the customer takes over the transport of the item from the point of manufacture to the site of its use, the customer shall bear the risk for the duration of the transport.
- 3.4 The provisions for the transfer of risk shall also apply if partial deliveries are made or other services are to be performed by us.
- 3.5 Should the delivery or acceptance be delayed or not take place as a result of circumstances which are not attributable to us, the risk shall be transferred to the customer from the day of notification that the goods are ready for shipment or collection. We undertake to take out insurances as requested by the customer at his expense.
- 3.6 Notwithstanding his rights under section 8 hereof, the customer may not refuse the acceptance of the performance in the event of insignificant defects or deviations in volume.
- 3.7 The customer is not entitled to return the goods which have been delivered in accordance with the contract.
- 3.8 If the shipment is delayed at the customer's request or for reasons for which he is responsible, or if we have agreed with the customer that the he has to accept the goods, and if the acceptance is delayed owing to circumstances for which the customer is responsible, we are entitled to charge the customer storage costs for each month amounting to 0.5 % of the relevant order volume, beginning with the month after notification of the readiness for shipment, however not more than 5 %. The proof of higher or lower storage costs remains unaffected. Moreover, we are entitled to charge the incurred additional costs according to § 304 German Civil Code in the event of a delay in acceptance by the customer.

3.9 Release orders have to be accepted by the customer within 4 months after expiry of the contractual term. If the customer fails to accept the goods, he shall be in default on expiry of the deadline without further reminder. In this case we are entitled to request compensation for any damages due to the delay in acceptance. After stipulating a reasonable extension period, we may additionally withdraw from the contract or demand compensation instead of the performance.

4. Retention of title

4.1 Ownership to the subject of delivery shall not pass to the customer until payment has been made in full. If the validity of this retention of title is subject to certain conditions or special formal requirements in the country of destination, the customer shall ensure that they are fulfilled.

4.2 The customer may not pledge, sell or assign as security the subject of delivery prior to the passage of title. In the event of pledges and seizures or other orders by third parties, the customer must inform the third party of our title and notify us without undue delay.

4.3 In the event of actions on the part of the customer in breach of contract, including, but not limited to, default of payment, we shall be entitled to repossession following a notice of default, and the customer shall be obliged to surrender possession. Neither the enforcement of the retention of title nor the pledge of the subject of delivery by us shall be deemed to be a rescission of contract.

4.4 An application for the initiation of insolvency proceedings concerning the customer's assets shall entitle us to rescind the contract and to demand immediate return of the subject of delivery.

4.5 If customer is residing in the Federal Republic of Germany, the following shall apply in addition to the foregoing:

4.5.a By way of derogation from section 4.1 hereof, we reserve ownership to the subject of delivery until all of our claims against the customer within our ongoing business relationship have been satisfied.

4.5.b By way of derogation from section 4.2 hereof, the customer is entitled within the scope of his normal business transactions, to resell the subject of delivery for which we reserve ownership under the following conditions: He must resell the subject of delivery under retention of title if the subject of delivery is not immediately paid in full by the third-party customer. There shall be no entitlement to a resale if the customer is in default of payment. The customer hereby assigns the claims arising under the resale or under any other legal grounds to us to secure our claims. In the event that the reserved goods are processed and co-ownership is created, the assignment shall only encompass the percentage of claims corresponding to our co-ownership.

4.5.c The customer shall remain entitled to collect the claims assigned to us after their assignment for as long as he complies with his payment obligations to us in accordance with the terms of this contract. We may demand at any time that the customer discloses the assigned claims and the debtors thereof, provides us with all information necessary for collecting such claims, delivers to us the documents pertaining thereto and informs the debtor of the assignment.

4.5.d Processing of the reserved goods by the customer shall always be effected on our behalf. If the reserved goods are blended, bonded or processed with items to which we do not own a title, we shall acquire co-ownership at the ratio of the invoiced value of the reserved goods to the other processed items at the time of processing. If our goods are blended, bonded or processed with other movables to a single item and if the other item is to be viewed as the main item, it shall be deemed that the customer shall transfer proportionate co-ownership to us, provided that he is the owner of the main item. The customer shall act as custodian of the property or joint property for us. In all other respects, the same provisions shall apply for the item created by processing, bonding or blending as for reserved goods.

4.5.e We undertake to release the securities to which we are entitled to the extent that the invoice value of all securities which can be realised exceeds not just temporarily the total amount of all our claims by more than 15 %.

4.5.f Provided that the subject of our deliveries are firmly connected to the ground or have been integrated into a building, such connection or integration shall only take place for temporary purposes.

5. Term of performance

5.1 Compliance with the agreed performance term requires that all commercial and technical issues between the customer and us have been settled and that the customer has performed all of his obligations. If this is not the case, the performance term shall be extended accordingly. The foregoing shall not apply if the delay is our responsibility.

- 5.2 Compliance with the performance term is subject to the condition that deliveries to us are correct and on time. We shall notify the customer of any foreseeable delays.
- 5.3 The performance term has been honoured if notice of the readiness for shipment has been given. If acceptance must be made, the acceptance date or, alternatively, our notice of the readiness for acceptance shall govern timeliness.
- 5.4 If non-compliance is attributable to force majeure, labour disputes, delays in procuring government licences or other events outside our scope of influence, the performance term shall be reasonably extended. This shall also apply if we are in default of rendering our performance. We shall inform the customer of foreseeable delays.
- 5.5 If the shipment or acceptance of the subject of delivery is delayed on grounds for which the customer must bear responsibility, the costs incurred by the delay shall be charged to him. We reserve the right to assert further damage compensation claims.
- 5.6 We reserve the right to dispose of the subject of delivery if the customer has allowed a reasonable period for delivery or acceptance set by us to expire, and to supply the customer in a reasonably extended period.

6. Delays in performance, impossibility

- 6.1 In the event of partial impossibility the customer may only rescind the contract if it can be proven that the partial performance is of no interest for the customer. If this is not the case, the customer must pay the prices according to the terms of contract attributable to the partial delivery. Otherwise, section 9 shall apply. If impossibility occurs while the customer is in default of acceptance or because of customer's fault, he shall remain obliged to provide consideration.
- 6.2 If the responsibility for impossibility is not to be borne by either party, we are entitled to claim a part of the remuneration corresponding to the work performed by us.
- 6.3 If we are in default and the customer incurs damages because of this, he shall be entitled to demand a flat rate default compensation. This default compensation shall be 0.5 per cent for each full week as of the date the claim has been received by us in writing, however, not exceeding a total of 5 % of the value of that part of the complete delivery which could not be used due to the delay and/or as stipulated.
- 6.4 Within the scope of the statutory provisions, the customer is entitled to rescind the contract if, taking into account the exceptions under statute, a reasonable grace period for the rendering of our performance set for us by him during our default has been allowed to expire.
- 6.5 Any further claims because of a default in delivery shall be governed exclusively by section 9.

7. Acceptance

- 7.1 In case of work performance, the customer is only entitled to refuse acceptance if the defect cancels out or significantly reduces the normal and/or contractually stipulated use of the work and/or its value. If the work contains defects not entitling the customer to refuse acceptance, acceptance shall be made under the reservation that the defects are rectified.
- 7.2 Refusals of acceptance, objections to acceptance or reservations against acceptance must be made immediately in writing, accompanied by the designation and description of the reported defect.
- 7.3 The use of the subject of delivery by the customer shall be regarded as acceptance.

8. Claims for defects

- 8.1 In case of material or legal defects, the customer is entitled to the following claims for defects:
 - 8.1.a Claims for defects by the customer are based on the assumption that he has properly adhered to the examination and complaint stipulations as outlined in § 377 German Commercial Code.
 - 8.1.b At our discretion we shall deliver a defect-free item or remedy the defect, provided the subject of delivery is proven

- to have already been defective upon the passing of risk pursuant to section 3. The customer shall notify us immediately of any defects in writing stating and describing the reported defect. We have the right to retain the title to parts replaced as part of the exchange procedure.
- 8.1.c No claims for defects shall be created by causes which are not attributable to any fault on our part, such as: Normal wear and tear, excessive usage, unprofessional intervention or maintenance by the customer or third parties, incomplete or incorrect information supplied by the customer, improper operation, assembly or start-up, wrong or negligent handling, improper maintenance, use of unsuitable operating materials/substitute materials, defective construction work, unsuitable subsoil, hazardous ambience conditions unknown to us, chemical, electro-chemical or electrical influences, changes to the subject of delivery made without our consent.
- 8.1.d The customer must provide us with the required time and opportunity for subsequent performance. If we are not provided with this opportunity, we shall not be liable for any resulting consequences.
- 8.1.e In the event of remedial work we shall bear all of the costs required for the purpose of rectifying the defect, particularly transport and travel costs and the costs of labour and materials, provided these costs are not increased because the subject of delivery was moved to a site other than the place of performance.
- 8.1.f In the event that customer culpably contributes to the cause of the defects, including, but not limited to, his failure to comply with the duty to avoid or reduce damage, we shall be entitled to a damage compensation claim after the subsequent performance which corresponds to the customer's contribution to the cause of the defect.
- 8.1.g The customer shall be entitled to the right to rescind the contract if – taking into account the exceptions under statute - a grace period set for us for subsequent performance with respect to a defect is allowed to expire. If the defect is only insignificant, the customer may only demand a reasonable reduction of the contract price. Otherwise, the right to a reduction of the contract price shall be excluded.
- 8.1.h For assembly, repair and other services, section 13.9 shall apply instead of section 8.1.g.
- 8.1.i If the use of the subject of delivery within the periods set down in sections 11 results in the infringement of intellectual property rights or copyrights, we shall generally procure the right to continued use for the customer or alter the subject of delivery in such manner that an infringement of the intellectual property or copyright no longer exists. If this is not possible under commercially reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract. We shall indemnify the customer within these periods against undisputed or final and absolute claims of the owners of the intellectual property rights.
- 8.1.j Subject to section 9, our obligations described in section 8.1.i. are final and conclusive in case of infringements of intellectual property and copyrights.
- 8.1.k The claim to subsequent performance for infringements of intellectual property rights and copyrights shall only exist if
- the customer informs us immediately in writing, stating the designation and description of the alleged infringements of intellectual property rights or copyrights,
 - the customer reasonably supports us in the defence against asserted claims or enables us to carry out the modifications pursuant to section 8.1.i.,
 - we are reserved the right to undertake all defensive measures, including out-of-court settlements,
 - the infringement of intellectual property or copyrights is not based on instructions or specifications provided by the customer,
 - the infringement of intellectual property or copyrights was not caused by the fact that the customer autonomously modified the subject of delivery or used it in a manner not conforming to the terms of contract.
- 8.2 All further claims for defects under warranty (including, but not limited to, compensation for damages not occurring to the subject of delivery itself) are governed exclusively by sections 9 and 13.9.
- 8.3 In case used products are sold, all claims because of defects shall be excluded unless statutory liability applies.

9. Liability

- 9.1 We are only liable, even in the event of damage due to a breach of duties during contract negotiations and irrespective of the legal grounds for liability (including, but not limited to, compensation for damage caused other than to the subject of delivery itself) in the case of:
- intent,
 - culpable breach of major contractual obligations,
 - gross negligence by corporate bodies or executive officers
 - culpable bodily harm, death and damage to health,

- defects we have fraudulently concealed,
- breach of guarantees of quality or durability,
- personal injury and property damage to personal items, provided that liability exists under the Product Liability Act for personal used items.

- 9.2 In the event of the breach of major contractual obligations we shall also be liable for gross negligence by non-executive employees or for slight negligence by part of corporate bodies and executive officers. In the event of slight negligence, our liability is limited to reasonably foreseeable damage typical to the given type of contract.
- 9.3 Our liability for the destruction of data is limited to the costs which would be required for their reconstruction if the data had been properly saved by the customer.
- 9.4 Compensation for mere financial loss is limited by the general principles of good faith, such as in the case of a disproportionate discrepancy between the value of the contract and the extent of damages.
- 9.5 Any further liability on whatever legal grounds, including, but not limited to, compensation for damages not caused to the subject of delivery itself, shall be excluded.
- 9.6 We shall not be liable for the consequences of defects for which no claims for defects are provided for under section 8.1.c.

10. Insurance claims

To the extent we have direct claims as a joint policyholder against the customer's insurer with respect to the subject of delivery, the customer hereby gives his consent to the assertion of such claims.

11. Period of limitation

- 11.1 Claims for defects by the client become time-barred 12 months after passage of risk, unless stipulated otherwise. In deviation from this, the limitation period for claims because of defects for products from the product groups Q calorific 5 (heat allocation meter) and Q heat 5 (thermal energy counter) is 4 full calendar years, starting with 01.01. of the year following the passage of risk.
- 11.2 All other claims by the customer, regardless of the legal basis of claim, shall be barred 12 months as of the passing of risk.
- 11.3 For harm to life, limb or health, grossly negligent behaviour of corporate bodies and executive officers; intentional or fraudulent acts; the breach of major contractual obligations or of guarantees and for claims under the Product Liability Act, the statutory limitation periods shall apply.

12. Assembly, Repairs and Other Services

For assembly, repairs and other services, the following provisions shall apply in addition:

- 12.1 The customer has to inform our staff at his own expense about existing safety regulations and safety hazards and has to take all necessary measures to protect persons and property at the workplace.
- 12.2 The customer has to support our staff to the extent required at his own expense in the execution of the works and to provide the required assistance, such as preparation of the site, provision of tools and lifting equipment, provision of water and electricity, etc.
- 12.3 The assistance provided by the customer has to ensure that our staff can start with their work immediately after their arrival and without delay until the inspection.
- 12.4 If the customer does not meet his obligations, we are entitled, however not obliged, to carry out the tasks instead of him and at his expense.
- 12.5 If our performance cannot be carried out by us on grounds for which we are not responsible, the customer shall

compensate us for already rendered performance and any incurred time and expense.

- 12.6 Replaced parts remain our property. We reserve the right to forego our property of the replaced parts against payment by the customer.
- 12.7 Should the performance perish or deteriorate prior to acceptance through no fault on our part, the customer shall pay us the price minus any savings in expenses.
- 12.8 Repair deadlines are only binding if confirmed by us in writing.
- 12.9 In case of assembly, repair and other services, the customer shall be entitled within the scope of the statutory provisions to make a reduction if, taking into account the exceptions provided for under statute, a grace period set for us for subsequent performance with respect to a defect is allowed to expire. The right to a reduction shall also exist in other cases where remedial work has failed. Customer shall only be entitled to rescind the contract if, despite the reduction, the repair is proven to be of no interest for the customer.

13. General

- 13.1 All taxes, fees and levies in connection with the performance outside of the Federal Republic of Germany shall be borne by the customer and are to be reimbursed to us as the case may be.
- 13.2 Personal data shall be stored by us in compliance with the statutory regulations.
- 13.3 We shall not reimburse any costs for the return transport of packaging.
- 13.4 Customer shall procure at his own expense all of the licences and/or import/export papers for using the products.
- 13.5 Place of performance for customer's obligations in relation to us is the location of our registered offices.
- 13.6 Should individual provisions of these General Terms and Conditions or the contract be or become invalid, this shall not affect the remaining provisions.

14. Applicable law, place of jurisdiction

- 14.1 If customer's registered offices are located within the Federal Republic of Germany, exclusive place of jurisdiction for all disputes shall be the location of our registered offices. We reserve the right to file an action at the statutory court of the customer.
- 14.2 If the customer's registered offices are located outside of the Federal Republic of Germany, disputes shall be settled by arbitration proceedings at the International Chamber of Commerce in Paris in accordance with the ICC Rules of Arbitration. The award shall be final and absolute, and is to be made, with the grounds stated, by three arbitrators. It shall be possible for our insurance company to participate in accordance with the opportunities for participation available in proceedings before a court of law. We reserve the right to enter an action before a court of law having jurisdiction.
- 14.3 The laws of the Federal Republic of Germany shall apply with the exception of all of the provisions governing the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).