

General Terms and Conditions of Delivery

I. General provisions

1. These General Terms and Conditions of Delivery exclusively apply to legal relationships between the supplier and ordering party in relation to deliveries and/or services of the supplier (hereinafter: “deliveries”). General terms and conditions of the ordering party shall only apply if the supplier has expressly consented to them in written form. Written declarations in mutual agreement are the decisive factor for the scope of deliveries.
2. The supplier reserves its ownership and copyright-related rights of use to cost estimates, drawings and other documents (hereinafter: “documents”) without restriction. The documents may only be made accessible to third parties upon prior consent of the supplier and are to be returned immediately upon request if the order is not placed with the supplier. Sentences and 1 and 2 apply accordingly to documents of the ordering party. However, these documents may be made accessible to third parties whom the supplier has transferred deliveries in a permissible manner.
3. The ordering party has the non-exclusive right of use to standard software and firmware with the agreed performance features in unchanged form on the devices agreed upon. The ordering party is allowed to make a backup copy of the standard software without an explicit agreement to do so.
4. Partial deliveries may be made as long as they are acceptable to the ordering party.
5. The term “damage compensation claims” in these General Terms and Conditions of Delivery also covers claims to compensation for any expenses incurred in vain.

II. Prices, payment conditions and offsetting

1. Prices are ex works excluding packaging and do not include the applicable statutory value-added tax.
2. If the supplier has assumed the setup or installation work and nothing else has been agreed upon, the supplier shall assume all necessary ancillary costs such as travel expenses and transport costs, as well as daily allowances.
3. Payments shall be made in full to the supplier’s stated account.
4. The ordering party may only offset such claims that are uncontested or ascertained with legally binding effect.

III. Retention of title

1. The delivery items (goods under retention) remain property of the supplier until all claims towards the ordering party to which the supplier is entitled based on the business relationship have been settled. If the value of all security rights to which the supplier is entitled exceeds the amount of all secured claims by more than 10%, the supplier shall release a proportional part of the security rights at the request of the ordering party; the supplier shall be entitled to choose between different security rights for release.
2. As long as the reservation of title, remains in effect, the ordering party shall be prohibited from pledging or transferring ownership by way of security. Resale is only permitted to resellers in the ordinary course of business and only on the condition that the reseller receives payment from its customer or makes the provision that ownership is not transferred to the customer until the latter has fulfilled its payment obligations.
3. The ordering party shall notify the supplier without delay in the event of seizure, confiscation or other dispositions or interventions by third parties.
4. In the event of a breach of duty by the ordering party, in particular in the event of default in payment, the supplier shall be entitled to withdraw from the contract in addition to taking back the retained goods after a reasonable grace period granted to the ordering party has elapsed without result; the statutory provisions on dispensing with granting a grace period shall remain unaffected. The ordering party is obliged to return the goods. Take-back or assertion of retention of ownership or pledging of the retained goods by the supplier does not constitute withdrawal from the contract unless the supplier has explicitly declared this.

IV. Delivery deadlines; delays

1. Compliance with deadlines for deliveries are conditional upon the timely receipt of all documents to be provided by the ordering party, necessary authorisations and releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations by the ordering party. If these conditions are not met on time, the deadlines will be prolonged for a reasonable amount of time; this does not apply if the supplier is responsible for the delay.
2. If failure to comply with the deadlines is attributable to force majeure, such as mobilisation, war, unrest or similar events, such as strike or lock-out, the deadlines will be prolonged for a reasonable amount of time. The same applies if the supplier does not receive its supplies in good time or proper order.

3. If the supplier is delayed in delivery, the ordering party may – if it can credibly demonstrate that it has incurred damages from the delay – demand compensation for each entire week of delay amounting to 0.5% for each week, albeit not more than 5% of the price of the portion of the deliveries which could not be expediently put into operation due to the delay. Damage compensation claims of the ordering party due to the delay in delivery as well as claims to damage compensation in lieu of performance beyond the limits specified in No. 3 are excluded in all cases of delayed delivery, even after any delivery deadline set for the supplier has elapsed.
4. This does not apply if assuming liability is mandatory in cases of wilful misconduct, gross negligence or harm to life, limb or health. The ordering party may only withdraw from the contract under statutory provisions if the supplier is responsible for the delay in delivery. The arrangements above do not entail any change in the burden of proof to the detriment of the ordering party.
5. The ordering party is obliged to declare (at the supplier's request) whether it wishes to withdraw from the contract due to the delay in delivery or insist upon delivery.
6. If shipping or delivery is delayed at the ordering party's request by more than one month after the ready-to-ship notification is given, the ordering party may be billed for storage charges for each additional month started amounting to 0.5% of the price of the delivery items, albeit not more than 5% in total.
The contracting parties remain free to prove that storage expenses are higher or lower.

V. Transfer of risk

1. The risk is also transferred to the ordering party in the case of carriage paid delivery as follows:
 - a) in the case of deliveries without setup or installation work, if they have been brought for shipping or collected. The supplier shall insure deliveries for ordinary transport risks at the request and expense of the ordering party;
 - b) in the case of deliveries including setup or installation, the risk is transferred on the date of acceptance at the ordering party's own company or, if agreed upon, after trouble-free trial operation.
2. If shipping, delivery, commencement, performance of setup or installation, acceptance at the ordering party's own company or trial operation is delayed for reasons for which the ordering party is responsible, or if the ordering party is in default of acceptance for any other reason, the risk shall be transferred to the ordering party.

VI. Setup and installation

Unless otherwise agreed upon in writing, the following conditions shall apply to setup and installation:

1. The ordering party shall provide the following at its own expense and in good time:
 - a) a suitable installation site in a dry room,
 - b) energy and compressed air at the place of use, including connections and a heated and illuminated environment,
 - c) space for the installation frame for the storage of machine parts, devices, materials, tools, etc. Furthermore, the ordering party shall take the same measures at the installation site to protect the supplier's property as it would to protect its own property.
2. Access routes and the setup or installation site must be level and clear.
3. If setup, installation or commissioning are delayed due to circumstances for which the supplier is not responsible, the ordering party shall assume reasonable expenses for the waiting period and additional travel necessary on the part of the supplier or installation personnel.
4. If the supplier requests acceptance of the delivery upon completion, the ordering party shall perform this within two weeks. If this does not happen, then acceptance will be deemed to have been given. Likewise, acceptance will be deemed to have been given if the delivery is put to use (if applicable, after an agreed testing phase has been completed).
5. If, after conclusion of the contract, the ordering party requests a change in the services or deliveries ordered or already provided, this shall be deemed to be a request for change, unless the request for change is explicitly marked as a notice of defect. Change requests are to be paid for separately. Change requests will result in a reasonable extension of the performance and delivery deadlines which the parties have agreed upon.

VII. Acceptance upon receipt

The ordering party may not refuse acceptance of deliveries due to insignificant defects.

VIII. Material defects

The supplier shall assume liability for material defects as follows:

1. All parts or services exhibiting a material defect must, at the supplier's discretion, be repaired, replaced or performed again free of charge, provided that the cause of the defect already existed at the time of transfer of risk.

2. Claims to subsequent performance will lapse in 12 months as of the statutory beginning of the limitation period; the same applies to withdrawal and reduction. This term does not apply in cases of wilful misconduct, fraudulent concealment or the defect and/or non-compliance with a quality guarantee, insofar as the law as per Sections 438(1)(2) (structures and materials for structures), 479(1) (entitlement to recourse) and 634a(1)(2) (construction defects) of the German Civil Code (BGB) call for longer periods of time. The statutory provisions on suspension of expiry, suspension and recommencement of time limits shall remain unaffected.
3. Notices of defects from the ordering party must be made in writing without delay.
4. In the event of notices of defects, payments by the ordering party may be withheld to a reasonable extent in proportion to the material defects which appeared. The ordering party may only withhold payments if a notice of defects has been asserted which is undoubtedly justified. The ordering party has no right to withhold payment if its claims to defects have already lapsed. If the notice of defects is unjustified, the supplier shall be entitled to demand compensation from the ordering party for the expenses incurred.
5. The supplier is to be granted an opportunity to render subsequent performance within a reasonable timeframe.
6. If the subsequent performance proves unsuccessful, the ordering party may – without prejudice to any claims for damages under No. 10 – withdraw from the contract or reduce the remuneration.
7. Claims for defects shall not apply if any potential deviations from the agreed quality are only insignificant, in the case of impaired usability which is only insignificant, in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating resources, or due to extraordinary external influences not anticipated under the contract, as well as in the case of non-reproducible software errors. If the ordering party or any third parties carry out improper modifications or repair work, any claims for defects for these and the resulting consequences shall also be excluded.
8. Any claims of the ordering party due to expenses necessarily incurred for the purpose of supplementary performance, including costs of travel, transport, labour, and material are excluded if expenses are increased because the delivery items have subsequently been brought to a location other than the ordering party's establishment, unless doing so is part of the intended use of the delivery items.

9. The ordering party's right of recourse against the Supplier pursuant to Section 478 BGB (recourse of the contractor) shall only apply if the ordering party has not concluded any agreements with its customers beyond the scope of the statutory provisions governing claims for defects. Furthermore, No. 8 applies accordingly to the scope of the ordering party's right of recourse against the supplier as per Section 478(2) BGB.
10. Damage compensation claims of the ordering party due to material defects are excluded. This does not apply in cases of fraudulent concealment of the defect, failure to comply with a quality guarantee, harm to life, limb, health or freedom or in the case of liability for a wilful or grossly negligent breach of duty on the part of the supplier. The arrangements above do not entail any change in the burden of proof to the detriment of the ordering party. Any claims of the ordering party due to material defects other than or extending beyond those provided for in this Art. VIII are excluded.
11. No guarantee is assumed for damages which have occurred for the following reasons: failure to follow the operating instructions, unsuitable or improper use or storage, faulty installation or commissioning by the ordering party or third parties, natural wear and tear, faulty or negligent handling – in particular excessive loading, unsuitable operating materials, substitute materials, incorrect, faulty or insufficient information about the intended operating conditions such as medium, impurities of the medium, temperature, etc., provided that they are not attributable to culpability on the part of the supplier due to defective workmanship.
In addition, no guarantee can be assumed for damages resulting from the interaction of unsuitable products provided by the ordering party.
12. The guarantee period for the replacement part and repair is six months, but shall run at least until the expiry of the original guarantee period for the delivery item. The period of liability for defects with the delivery item shall be extended by the duration of the work interruption caused by the rectification work.
13. Rectification of defects can also be refused if the ordering party fails to fulfil its obligations. The existence of defects does not entail any right to rescission, reduction or assertion of the right of retention by the ordering party.
14. Improper modifications or repairs made by the ordering party or a third party without the prior approval of the supplier preclude any liability for the consequences and will render any guarantee obligations null and void.

15. Liability for ancillary obligations, further claims of the ordering party, in particular claims for compensation for damages not incurred to the delivery item itself, are excluded to the extent permitted by law.
16. Liability for damage to parts caused by being immersed in the machine is excluded. The ordering party is obliged to ensure that the parts cannot be damaged by being immersed in the machine delivered.

IX. Industrial property rights and copyrights; defects of title

1. Unless otherwise agreed upon, the supplier shall only be obliged to provide the delivery free of industrial property rights and copyrights of third parties (hereinafter: property rights) in the country of the place of delivery. If a third party asserts a justified claim against the ordering party based on an industrial property right infringement due to deliveries made by the supplier and used in conformity with the contract, the supplier shall be liable to the ordering party within the period defined in Art. VIII No. 2 as follows:
 - a) The supplier shall, at its discretion and expense, either obtain a right of use for the deliveries in question, modify them so that the industrial property right is not infringed, or shall replace them. If the supplier is unable to do this under reasonable conditions, the ordering party shall be entitled to the statutory rights of withdrawal or reduction.
 - b) The supplier's obligation to render damage compensation is based on Art. XI.
 - c) The aforementioned obligations of the supplier shall only apply if the ordering party immediately notifies the supplier in writing of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for the supplier. If the ordering party ceases to use the supplies in order to mitigate damages or for other good cause, the ordering party shall be obliged to inform the third party that such cessation of use does not constitute an acknowledgement of any industrial property right infringement.
2. Claims of the ordering party are excluded if it is responsible for the industrial property right infringement.
3. Claims of the ordering party shall also be excluded if the infringement of the industrial property right infringement is caused by special requirements imposed by the ordering party, by a use not foreseeable by the supplier or by the delivery being modified by the ordering party or being used together with products not provided by the supplier.
4. Furthermore, the provisions of Art. VIII No. 4, 5 and 9 shall apply accordingly to the claims of the ordering party provided for under No. 1 a) in the case of industrial property right infringements.

5. The provisions of Art. VIII shall apply accordingly in case any other defects in title are at hand.
6. Any further claims of the ordering party or claims other than those provided for in this Art. IX against the supplier and its vicarious agents on account of a defect in title are excluded.

X. Impossibility; adjustments to the contract

1. Should delivery prove to be impossible, the ordering party shall be entitled to claim damages, unless the supplier is not responsible for the reason why the delivery is impossible. However, the ordering party's damage compensation claim is limited to 10% of the value of the portion of the delivery which cannot be expediently put into operation due to the impossibility. This limitation does not apply if assuming liability is mandatory in cases of wilful misconduct, gross negligence or harm to life, limb or health; this does not entail any change in the burden of proof to the detriment of the ordering party. The ordering party's right to withdraw from the contract remains unaffected.
2. If any unforeseeable events as defined by Art. IV No. 2 significantly change the economic significance or the content of the delivery or have a significant effect on the supplier's operations, the contract shall be adjusted appropriately in observance of the principles of good faith. If this is not economically feasible, the supplier shall be entitled to withdraw from the contract. If the supplier wishes to assert this right of withdrawal, it shall notify the ordering party of this immediately upon realising the consequences of the event, even if an extension of the delivery time had initially been agreed upon with the ordering party.

XI. Other damage compensation claims; limitation period

1. Damage compensation claims on the part of the ordering party, regardless of their legal grounds, in particular for breach of obligations arising from the contractual obligation and from tort, are excluded.
2. This does not apply if assumption of liability is mandatory, e.g. as stipulated by the Product Liability Act, in cases of wilful misconduct, gross negligence or harm to life, limb or health, or due to breach of cardinal contractual obligations. However, damage compensation claims for breach of cardinal contractual obligations, are limited to damages which are foreseeable given the nature of the contract, as long as wilful intent or gross negligence is not at hand, or if liability due to harm to life, limb or health is being assumed. The arrangements above do not entail any change in the burden of proof to the detriment of the ordering party.

3. If the ordering party is entitled to damage compensation claims, they shall lapse once the limitation period under Art. VIII No. 2 has elapsed. The same applies to claims of the ordering party in connection with damage control measures (such as recalls). In the case of damage compensation claims under the Product Liability Act, the statutory provisions on limitation periods shall apply.

XII. Legal venue and applicable law

1. If the ordering party is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the domicile of the supplier. However, the supplier is also entitled to take action at the domicile of the ordering party.
2. Legal relations in connection with this contract are governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. Binding effect of the contract

Should any individual provisions of this contract prove to be legally invalid, the other parts of the contract shall remain valid. This does not apply if adherence to the contract would constitute an unreasonable hardship for one of the parties.