

GENERAL TERMS AND CONDITIONS FOR DELIVERIES AND SERVICES (AS AT: MARCH 2017)



I. SCOPE

1. Our deliveries and services resulting from contracts with entrepreneurs as defined by § 14 of the German Civil Code, with public legal entities, or with special funds under public law are exclusively provided based on these terms and conditions. These are part of all contracts we conclude with our clients (hereinafter known as "clients" or "customers") in relation to deliveries and services offered by us. They also apply for future deliveries, services or offers made to the client, even if they are not separately agreed on again.

2. In any case, acceptance of the delivery or service implies acknowledgement of the terms and conditions.

3. Conflicting or differing client terms and conditions are invalid, even if they are not specifically rejected. If we refer to a letter containing or referencing the client's or a third party's terms and conditions, this does not imply we consent to the valid of those terms and conditions. We hereby reject customer counter-confirmations referring to its terms and conditions of business and purchase. These are only considered valid if they have been recognised by us in writing.

4. Previous terms and conditions hereby lose their validity.

II. OFFER AND CONTRACT CONCLUSION, QUOTATION DOCUMENTS

1. Our offers are subject to change, unless they are expressly marked as binding, or contain a certain acceptance deadline. If our no-obligation offer is accepted, a contract is concluded, unless this is immediately rejected by us.

2. If the client's order is an offer as defined by § 145 of

the German Civil Code, we can accept this within 2 weeks of receipt, unless the customer has set a shorter acceptance period in writing. The offer is only deemed as accepted once an order confirmation has been sent, the item is delivered or the service commences.

3. All agreements made between us and the customer in relation to the mutual contractual rights and duties, and contract execution, are stated in writing in our order confirmation or the contractual deed. The same applies for any guarantees or sub-agreements. Verbal promises made by us before contract conclusion are not legally binding.

4. Additions and amendments to the agreements, including these General Terms and Conditions, must be made in writing in order to be deemed valid. With the exception of our managing directors or authorised representatives, our staffs are not entitled to make verbal agreements which differ from the order confirmation or written contract. Faxes are considered written form; other telecommunication formats, particularly email, are not.

5. Brochures, diagrams, leaflets etc. published by us, and service details or other features contained therein (e.g. weight, quality, dimensions, values in use, capacity, tolerances, technical data) are only definitive for the contract if their validity is expressly agreed on in writing.

6. Our quality details relating to the delivery or service (see point 5), as well as our diagrams thereof (e.g. drawings, illustrations) are only approximate, unless useability for the contractual purpose requires them to match exactly. They are not guaranteed quality-related agreements, but rather descriptions or labels of the delivery or service.

7. We reserve the proprietary rights and copyrights to all quotes and costings submitted by us, as well as diagrams, illustrations, calculations, brochures, catalogues, models,

tools and other documents and aids provided to the customer. The customer must not make these items or their content accessible to third parties, publish them, use them themselves or through third parties, or reproduce them without our express consent. At our request, the customer must return all items to us and destroy any copies thereof if they are not longer needed for conventional business processes, or if negotiations do not result in a contract.

III. QUALITIES, DIMENSIONS, WEIGHTS; SERVICE CHANGES/DEVIATIONS

1. Unless otherwise agreed, qualities and dimensions of the material to be provided by us are governed solely by the German materials standards. Deviations within the DIN scope are permitted.
2. We reserve the right to make conventional changes or deviations from the agreed service (e.g. in relation to quantity, weight, quality). Changes or deviations can also be made in the event of just cause, particularly if they are technically necessary, and the change/deviation is feasible for the customer.

IV. PRICES, EXPENSES FOR SERVICE MODIFICATIONS, ASSEMBLY COSTS, PRICE CHANGE

1. Our prices apply for the services and deliveries listed in the order confirmations. Additional or special services are charged separately. Unless otherwise agreed, the prices are considered "ex works in Witten" plus packaging and the legal VAT. Export deliveries are exclusive of customs duties, fees and other public charges. The legal VAT valid on the invoice date is shown separately on the invoice. If the customer asks for the goods to be sent, the transport costs are charged extra.
2. Expenses incurred as a result of changes made to the type or scope of the delivery/service at the purchaser's request after our order confirmation/contract conclusion and/or incurred by fulfilling subsequent or unforeseeable official requirements are similarly charged in addition to the agreed purchase price.
3. Unless otherwise agreed, assembly costs are charged separately.
4. If items deliveries or services are not provided as per the contract within two months of contract conclusion, we reserve the right to change our prices if any cost reductions or cost increases beyond our control, particularly due to tariff agreements or material price changes, arise between the time of contract conclusion and the delivery/service due date. These will be proven to the customer upon request.

V. DELIVERY AND SERVICE TIME, IMPEDIMENT TO PERFORMANCE, PARTIAL DELIVERY

1. The delivery/service time stated by us is only approximate, unless a binding delivery/service time has been agreed on or expressly guaranteed by us in writing as being binding. Insofar as shipment has been agreed on, the delivery periods and dates refer to the time of handover to the shipping company, freight forwarder or other parties otherwise hired for transportation purposes.
2. The delivery/service time stated by us starts when the customer receives our order confirmation. Irrespective of our rights resulting from customer defaults, we can ask the customer to extend delivery or service times or postpone delivery and service dates by the duration for which the customer fails to comply with its contractual obligations.
3. The delivery period/deadline is extended by the duration of a temporary performance impediment beyond our control. This also applies if said performance impediment occurs at our supplier's end or its subcontractor's end. We will immediately inform the customer of the reason and expected duration of the delay. If the impediment is not expected to end within an appropriate time frame, we and the customer can partially or fully withdraw from the contract. However' the customer's right of withdrawal requires that the customer first set us a reasonable deadline to render the service, and that this lapse unsuccessfully. This deadline must be set under penalty of non-performance. Deadlines do not need to be set in the cases stated in § 323 Para. 2 of the German Civil Code.
4. Instead of one single delivery/service, we are entitled to make partial deliveries for deliveries/services consisting of multiple components within the delivery/service period, but only if
 - the partial delivery can be used by the customer for the contractual purpose,
 - delivery of the rest of the ordered items is guaranteed, and
 - the customer does not incur any significant additional expenses or costs from this (unless we declare ourselves willing to bear these costs).

VL. PLACE OF PERFORMANCE, SHIPPING AND TRANSFER OF RISK FOR DELIVERIES, DEFAULT OF ACCEPTANCE, ACCEPTANCE TESTS

1. Unless otherwise stated, the place of performance for all obligations resulting from the contractual relationship is Witten. If we are also responsible for installation/assembly, the place of performance is the place of installation.

2. Deliveries are made "ex works".

3. We choose the type of packaging, dispatch route, and mode of transport at our own discretion.

4. Items ready for shipment must be retrieved immediately. If not, we are entitled to choose to either dispatch or store the items at the client's expense and risk.

5. Risk is transferred to the customer no later than when the item is handed over to it for mail order purchases, or, for deliveries made free to the destination, no later than when the item is delivered to the transporter, whereby the start of the loading process constitutes the definitive time.

6. If the customer defaults with acceptance or culpably breaches other participation duties, we are entitled to demand compensation for any resulting damages, including any additional expense. This is subject to further claims or rights. Insofar as the requirements in clause 1 of this section are met, the risk of accidental loss or deterioration in the purchased item is transferred to the customer at the time the item is deemed ready for shipment. In the event of defaults in acceptance, our liability is limited as per point XI of these General Terms and Conditions.

7. The customer bears storage costs after the risk has been transferred. If we store items, the storage costs total 0.25% of the invoice amount for the stored items per completed week, subject to the assertion and proof of further or fewer storage costs.

8. The rules above also apply for partial deliveries.

9. We have taken out transport insurance for all deliveries, making us exempt from forwarding insurance. The supplier must inform the shipping company or freight forwarder of this.

10. Insofar as an acceptance test must be conducted, the purchased item is deemed as accepted if

- the delivery and - insofar as we are also responsible for installation/assembly – the installation/assembly has been completed,

- we have advised the customer of this, citing notional acceptance as per point VI.10., and asked it to conduct an acceptance test,

- the delivery or installation/assembly took place 12 working days prior, or the customer has started using the purchased item (e.g. started up operations using the de-

livered system), and in this case, delivery or installation/assembly took place 6 working days prior, and

- the customer fails to conduct an acceptance test within this time frame for a reason other than a reported defect which makes it impossible or significantly difficult to use the purchased item.

VII. DEFAULT IN PERFORMANCE BY THE CUSTOMER

1. A default in performance exists if the customer unjustly dissociates itself from the contract, particularly if it unjustly withdraws from the contract, terminates the contract or refuses to duly fulfil the contract.

In this case, after being set an appropriate extension period and allowing this to lapse unsuccessfully, the customer is obliged to compensate us for all resulting damages. We are entitled to charge a flat rate for damages, whereby the compensation amount is determined by the order value. In the event of a lump-sum charge, 5% of the delivery's order value can be charged as compensation. In the event of partial deliveries, the compensation totals 5% of the partial delivery's value. We reserve the right to claim higher damages.

2. If the client disputes the compensation amount, it must prove that no damages or significantly less damages were caused.

VIII. PAYMENT CONDITIONS, DEFAULT, OFFSETTING, WITHHOLDING RIGHT

1. Unless otherwise agreed, orders valued at over EUR 5,000 must be paid without any deduction, with 1/3 of the purchase price paid upon receipt of the order confirmation, 1/3 of the purchase price upon receiving notice that items are ready for shipment and 1/3 of the purchase price immediately after delivery.

2. For the rest, the legal payment due-date rules apply.

3. If the customer does not pay by the due date, the outstanding amounts incur an interest of 5% p.a. starting from the first overdue day; this does not affect the right to claim higher interest or further damages in the event of default.

4. We grant a 2% cash discount for orders up to EUR 5,000 and payment within 10 days of the invoice date.

5. We agree to charge a reminder fee of 8.00 EUR for each reminder sent by us, excluding any reminder which causes the default, unless the customer proves that the damages suffered by us are much less than the aforementioned flat rate.

6. The default interest is 12%, subject to further damage claims.

7. The customer is only entitled to offset claims if its counterclaims are legally established, undisputed or acknowledged by us.

8. The customer cannot refuse a service or exercise withholding rights, unless its counterclaims are legally established, undisputed or acknowledged by us.

9. We are entitled to only provide outstanding deliveries or services in return for advance payment or a security deposit if we become aware of circumstances indicating a significant deterioration in the customer's credit rating, and which imply a risk that the customer may not pay our outstanding claims resulting from the contractual relationship (including from other individual orders for which the same framework contract applies).

10. All offsetting requirements are based on the time our claim arises, not its payment due date. Offsetting can be performed as a cash payment, payment by bill of exchange, cheque or other payment. In the event of current account relationships, the offsetting agreement covers the balance. If the claims or liabilities are due on different days, the value date is used.

IX. NON-PERFORMANCE - DEADLINES, CUSTOMER WITHDRAWAL

1. In the event of non-performances affecting our contractual obligations (e.g. default, poor performance, breach of proprietary and auxiliary obligations, infeasibility, partial non-fulfilment), the deadline to be set by the customer by law must be done so in writing in order to be valid. Point II.4 last clause of these General Terms and Conditions applies with regards to written form.

2. If the non-performance is not our fault, the customer is not entitled to withdraw from the contract – except in the cases expressly stated in these conditions. In this case, the provisions of § 326 Para. 1 and Para. 4 of the German Civil Code apply. This does not affect the legal right of withdrawal in the event of defects.

3. In the event of non-performance caused by us, the customer is entitled to withdraw as per the law. The deadline to be set by it in accordance with the legal regulations must also be done so in writing, under penalty of non-performance. Withdrawal must be declared in writing. Point II.4 last clause of these General Terms and Conditions applies with regards to written form.

4. In the event of partial non-fulfilment caused by us, the customer is entitled, as per the requirements in point 3, to withdraw from the contract in relation to the partial services/deliveries not yet provided. It can only withdraw from the entire contract if the partial services/deliveries already made are of no interest to it.

5. The deadline set for us as per point 3 and 4 is considered

as having been upheld if we advise, by the deadline, that we are ready to provide the delivery/service. The delivery/service must then be immediately provided.

X. DEFECTS AND WARRANTIES

1. The statute of limitations for claims of the customer not subject to the deadline in § 438 Para. 1 no. 2 or § 634 Para. 1 no. 2 of the German Civil Code is 1 year from delivery or, insofar as an acceptance test is required, from the acceptance test. This does not affect the provisions in §§ 203 ff. of the German Civil Code. The regulation of this point 1 is not applicable for compensation claims (see point IX).

2. In the event of a commercial transaction as per §§ 373 ff. of the German Commercial Code, the customer's warranty rights require that the customer duly comply with its duties of inspection and reporting as per § 377 of the German Commercial Code: The delivered items must be carefully inspected immediately after delivery to the customer or the third parties appointed by it. They are considered as having been approved, unless we receive a written complaint relating to obvious defects, or other defects detected during an immediate, careful inspection, within 7 working days of delivery, or otherwise within 7 working days of the defect being detected, or any earlier time when the defect became apparent to the customer during normal use of the item, without further inspection.

If there is a purchase agreement, which does not constitute a commercial transaction (e.g. because the purchaser is a non-trader), the customer must immediately report any obvious or identifiable defects to us. If it does not, the item is considered as approved. If a defect becomes apparent later on, it must be reported as soon as it is detected; otherwise, it will be deemed as accepted, despite this defect.

The aforementioned duties of inspection and reporting also apply if a defect becomes known as part of a supplier's recourse (§ 478 Para. 6 German Civil Code).

3. The defect report must be made in writing. Point II.4 last clause of these General Terms and Conditions applies with regards to written form.

4. Insofar as there is a defect in the delivered item or service, we are entitled to choose, within an appropriate time frame, to provide a supplementary performance in the form of repairs or replacement delivery, or create a new product. The customer does not need to set a time limit for supplementary performance, insofar as such a time limit is unnecessary according to law. In case of supplementary performance we are obligated to bear all necessary expenses, particularly transport.

5. The duty to take action based on a defect report does not apply for us if the customer is obliged to make an advance payment, but has failed to do so. This particularly applies for agreed payments. A justified complaint does not exempt the customer from its payment obligation (cf. point VIII. 8.).

6. If we comply with our supplementary performance obligation by subsequently delivering flawless goods, we are not obliged to dismantle any original flawless items and fit the new, flawless items. Unless otherwise agreed on in writing, this is the customer's responsibility. We do not bear any dismantling or fitting costs, unless we are responsible for the original, defective delivery, in which case, we are entitled to dismantle the defective goods and fit the new, flawless goods.

7. When a new, flawless item is delivered, the purchaser is obliged to return/reimburse us for the benefits gained as per § 346 of the German Civil Code. The same applies of a new product is manufactured.

8. If the supplementary performance fails (including impossibility, infeasibility, refusal or inappropriate delay), the customer's right to supplementary performance expires. It is similarly not entitled to self-help. It can choose to either withdraw from the contract or demand a reduction, though the right of withdrawal cannot be exercised for construction services.

9. Repair work does not involve recommencement of the statute of limitations, but rather only a suspension thereof, as per § 203 of the German Civil Code.

10. Our warranty expires if original parts of the items delivered or made by us are replaced by parts originating from different sources, insofar as the defect has been caused by these foreign parts. The same applies if supplementary work, repairs or changes to items delivered or manufactured by us have been performed by third parties without our prior written consent, insofar as the defects were caused by this work. In any case, the customer must bear the additional costs incurred as a result of the changes.

11. The regulations modifying the warranty in the event of a supplier recourse (§ 478, 479 of the German Civil Code) are not affected by the provisions in points 1 to 10.

12. Unless otherwise agreed, we do not provide the customer with any guarantees in the legal sense of the word. This does not affect manufacturer guarantees.

13. If, in individual cases, it is agreed with the customer that used items are to be delivered, this is done without any warranty. The same applies for items expressly sold as "delisted material".

XI. LIABILITY LIMITATIONS

1. Insofar as we are at fault, our liability for compensation, regardless of the legal grounds, particularly due to impossibility, default, defective or incorrect delivery, contractual breach, breach of obligations during contractual negotiations, and unauthorised actions, is limited as per this point XI.

2. We are not liable in the event of minor negligence by our boards and committees, legal representatives, employees or other assistants, insofar as this does not constitute a breach of major contractual duties. Major contractual duties are the obligation to promptly deliver and install/assemble the item free of any significant defects, and the duties of consultancy, protection and care enabling the customer to use the item as per the contract, or which seek to protect persons or the customer's ownership from major damage.

3. Insofar as we are liable for compensation, this is limited to damages we foresaw as possible consequences of a contractual breach at the time of contract conclusion, or which we could have foreseen if due care had been exercised. Indirect damages and secondary damages resulting from item defects can only be compensated if they are to be typically expected from correct item use.

4. In the event of liability for minor negligence, our duty to compensate for material damages and resulting further financial losses is limited to an amount of 5,120,000.00 EUR (corresponding to the current ceiling amount for our product liability or liability insurance), even if this involves a breach of major contractual duties.

5. The existing liability disclaimers and limitations apply similarly for our boards and committees, legal representatives, employees and other assistants, as well as for their personal compensation liability.

6. The restrictions in this point XI. do not apply to our liability for deliberate actions, guaranteed quality features, physical injury, harm to health or breaches of the product liability act.

7. Insofar as we provide technical information or offer advice, and this information or advice is not part of the contractually agreed service, this is provided free of charge, under exclusion of any liability.

XII. PROPRIETARY RIGHTS

1. According to this point XII., we vouch for the fact that the delivery item is free of industrial proprietary rights or third-party copyrights. Each contractual party will immediately advise the other in writing if any claims are raised against them for breach of such rights.

2. In the event the delivery item breaches an industrial proprietary right or third-party copyright, we will choose to either modify or replace the delivery item, at our expense, so that no more third-party rights are breached but the delivery item still fulfils the contractually agreed purposes, or grant the customer a usage right by virtue of a licensing agreement. If we are unable to do this within a reasonable time frame, the customer is entitled to withdraw from the contract or reduce the purchase price appropriately. Any customer compensation claims are governed by the restrictions in point XI. of these General Terms and Conditions.

3. In the event of legal breaches caused by products delivered by us but made by other manufacturers, we will choose to either assert our claims against the manufacturer and upstream suppliers on behalf of the customer, or assign them to the customer. Claims against us only exist in the cases mentioned here in point XII. if judicial assertion of the aforementioned claims against the manufacturer and upstream supplier has been unsuccessful or is futile, e.g. due to bankruptcy.

XIII. RETENTION OF TITLE

1. We reserve the right to retain ownership of the items supplied by us until all our claims from the business relationship, including future claims, from contracts concluded simultaneously or subsequently, are settled. This also applies if some or all of our claims have been included in an ongoing invoice, and the balance has been set and acknowledged. The item, as well as the substitute item governed by the retention of title as per this point XIII is hereinafter known as the reserved item.

2. In the event the customer falls into default with payment, we are entitled to retract the reserved item after sending a reminder, and the customer is obliged to return it. This also applies for other illegal acts by the customer.

3. Once the reserved item has been retracted, we are authorised, but not obliged, to use it. The net proceeds are credited against the customer's liability – minus the appropriate usage costs. If our withdrawal right is not exercised, we are entitled to a compensation right in the legally stipulated cases.

4. During the retention of title period, the customer is obliged to handle the reserved item with care. It is particularly obliged to insure it, at its own expense, against fire damage, water damage and theft. The customer must perform regular maintenance and inspection work at its own expense, insofar as these are necessary.

5. When asserting the retention of title, and seizing any reserved items, we are only entitled to withdraw from the contract if an appropriate performance deadline set by

us has elapsed, and we expressly declare our withdrawal.

6. The customer must immediately inform us of seizures, other third-party interventions or damages to/destruction of the reserved item or part thereof, to as to enable us to assert our ownership rights. The same applies in the event bankruptcy proceedings are initiated on the customer's assets. Insofar as the third party is not able to reimburse us for the relevant prosecution costs, including the judicial and extrajudicial costs for third-party proceedings, the customer is liable for the loss we incur.

7. The request to initiate bankruptcy proceedings on the customer's assets entitles us to immediately withdraw from the contract and demand immediate return of the reserved item.

8. Until the enforcement event occurs, the customer is entitled to resell and/or process the delivered item as part of its normal business operations. Pledges and assignment as collateral are permitted.

9. If the item is processed by the customer, it is agreed that this shall be done in our name and on our behalf as the manufacturer, and that we directly acquire ownership or – if the item is processed using materials from several owners, or the value of the processed item is greater than that of the reserved item – co-ownership of the new item based on the ratio between the reserved item's value and the value of the new product. In the event we do not acquire such ownership, the customer immediately transfers its future ownership or co-ownership – in the aforementioned ratio – of the new product to us as collateral. If the reserved item is combined or inseparably mixed with other items to create one new product, and if one of the other items is considered the main component, we, insofar as the item belongs to us, transfer co-ownership of the final product to the customer based on the proportions stated in clause 1.

10. In the event of resale, the customer immediately assigns us, by way of security, all claims against the purchaser or third parties which it incurs as a result of the resale, regardless of whether or not the item has been resold processed or unprocessed. The assignment includes other claims which substitute the reserved item, or are otherwise incurred as a result of the reserved item, e.g. insurance claims or claims resulting from unauthorised actions in the event of loss or destruction. If the delivered item is resold together with other items not belonging to us, the customer's claim against the purchaser, totalling the delivery price agreed on between us and the customer, is considered as having been assigned. If, according to point 9 above, we have co-ownership of the sold item, the assignment is made to us based on our ownership share. The customer remains authorised to collect the assigned claims. This does not affect our entitlement to collect the claims ourselves.

We do, however, commit to not collecting the claims insofar as

- the customer does not duly comply with its payment duties, or
- the collection authorisation is not revoked, or
- bankruptcy is not filed for.

We can otherwise ask the customer to

- advise us of the assigned claims and their debtors,
- provide us with all information necessary for collection,
- provide the relevant documents and advise the debtors of the assignment, unless already done by the customer.

11. In the event the reserved items are resold, the customer commits to reaching an agreement with its purchaser to the effect that ownership is only transferred if the purchaser has fully complied with its payment duty to the customer.

12. To protect our claims raised against it, the customer also assigns us the claims raised against a third party, which it incurs as a result of combining the purchased item with a property.

13. If the value of the securities to which we are entitled permanently exceeds the claims due to be protected by more than 20%, we release securities as appropriate, and at our discretion, at the customer's request. The same applies if securities are eventually no longer required.

XIV. NON-TRANSFERABILITY OF CONTRACTUAL RIGHTS, ONWARD DELIVERY (EXPORT)

1. The customer may not transfer its delivery entitlement to third parties without our express consent. The same applies for the entitlement to manufacture the promised product. The customer can, in individual cases, raise a plea of estoppel against assertion of assignment prohibition.

2. At our request, the client is obliged to prove the items' whereabouts.

3. If the client or one of its downstream purchasers breaches these conditions, it must pay for the lost profit, insofar as this is proven by us or claims for this are raised against us.

XV. JURISDICTION, APPLICABLE LAW, SEVERABILITY CLAUSE

1. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is, at our discretion, either our business headquarters or those of the customer.

2. Our business headquarters are the sole place of juris-

diction for claims raised against us. Mandatory legal provisions relating to exclusive places of jurisdiction are not affected by this provision.

3. Federal German law applies for the contract and execution thereof as defined by the aforementioned regulation. The UN convention on contracts for the international sale of goods does not apply.

4. If individual provisions of this contract, including these General Terms and Conditions for deliveries and services, are or become invalid, this shall not affect the validity of the remaining provisions. The fully or partially invalid provision shall be replaced by one whose economic purpose comes as close as possible to the original, invalid provision.