

General terms and conditions for sale and delivery

1. Offers and orders

The order shall only be regarded as accepted once it has been confirmed by the supplier in writing. Until then, the offer of the supplier is to be regarded as non-binding.

Offer documentation data such as diagrams and illustrations, drawings, weights and dimensions are only approximate unless described as binding. Protective equipment shall only be supplied as explicitly agreed in each individual case. If the supplier becomes aware that the buyer is in financial difficulty after the contract has been concluded such that the ability of the buyer to payment may be regarded as endangered, the supplier may refuse to deliver unless the buyer provides security or payment in advance. In any case, the supplier shall be entitled to the rights conferred in BGB [Bürgerliches Gesetzbuch, German Civil Code] §321 Para. 2. In the case of withdrawal from the contract pursuant to BGB §321 Para. 2 Sentence 2, the supplier shall be entitled to claim for compensation for all costs incurred.

The written order confirmation of the supplier shall prevail in any questions referring to the range of delivery; in the case of an offer by the supplier with a period of validity and an order pursuant to the offer within that period, the offer shall prevail if no order confirmation has been issued within that period.

Additions, alterations and additional agreements made by telegram, telephone or the spoken word shall also require written confirmation from the supplier in order to apply.

2. Price

Prices are ex-works and do not include VAT/GST, packaging, freight and installation. These items, in particular the VAT/GST at the statutory level applicable, shall be added to the price quoted. Any packaging returned freight paid and in good condition to the supplier within one month shall be deducted at two-thirds from the final price calculated.

In the event that the wages or raw materials prices used as a basis in calculating the price should change up to the day of delivery, the supplier shall reserve the right to increase the price accordingly.

3. Terms of payment

The price shall be paid in EUROS net cash without deductions within 30 days from the invoice date.

Bills of exchange and cheques shall be accepted as payment only; the costs for discounting and collection shall be carried by the buyer.

If payment is deferred or paid later than agreed, an interest rate of eight percent above the base rate shall be charged without requiring that the buyer be found to be in default on payment. The supplier shall reserve the right to compensation for any additional damages incurred. In any case, BGB §288 shall apply. No rights to reservation on or deduction of counterclaims of the buyer from the payment of the price shall be exercised unless the counterclaim is uncontested or legally confirmed.

4. Delivery period

The delivery period shall apply ex-works; its compliance shall be subject to the punctual receipt of all documents to be provided by the buyer as well as the punctual clarification and approval of plans. The delivery period shall be confirmed subject to unforeseeable obstacles. In the event of such obstacles emerging, the delivery period shall be extended accordingly. The supplier shall inform the buyer of such obstacle immediately, or at the latest, within fourteen days of its becoming aware of the obstacle. The buyer shall have no entitlement to compensation for damages in any case of late delivery unless grave negligence or intent on the part of the owner, managing director or a management employee of the supplier is involved, or where major contractual obligations have been breached.

5. Transfer of risk

The risk shall be transferred to the buyer at the latest on dispatch of delivered goods, also where the consignment freight costs have been paid up to the place of receipt. Packaging and postage shall be in the most suitable fashion according to the discretion of the supplier, but without guarantee by the supplier. If the buyer should require insurance against damage caused by shipping, the buyer shall explicitly declare this on the order and carry the costs arising.

6. Acceptance and fulfilment

The obligations shall be regarded as fulfilled once the goods have been delivered according to the terms and provisions of the contract. From this time onwards, and notwithstanding any additional agreements such as installation, the supplier shall only be subject to the regulations described in the following regarding liability for defects. Complaints in whichever form shall only be permitted if received by the supplier within two weeks of receipt of the goods. This does not apply to concealed defects.

7. Liability for defects in the delivery goods

The supplier shall be liable for defects in the delivery goods, including the lack of guaranteed properties, to the exclusion of all further claims and notwithstanding Section 8 as follows:

a. All parts affected are to be remedied or replaced according to the reasonable discretion of the supplier with respect to the options open to the supplier that should arise within 12 months from acceptance due to circumstances that arose before the transfer of risk – especially due to defects in construction, raw materials, or defective completion – rendering the delivery unusable or only usable with major impairment. The determination of such defects shall be reported to the supplier immediately. Parts replaced shall become the property of the supplier.

In the event of a delay in dispatching, installing or commissioning without the fault of the supplier, the liability shall expire at the latest 12 months after transfer of risk.

Liability for major components from other suppliers shall be limited to the amount that the supplier can transfer to its own supplier for the goods involved.

b. The right of the buyer to launch a claim on defects shall be denied where the defects are obvious and the complaint is not launched within two weeks of delivery. In any case, the right to claim for defects shall expire within twelve months from the statutory begin of this period.

c. No guarantee shall be undertaken for damage caused by the following:

Inappropriate or improper use, defective assembly or commissioning by the buyer or a third party, natural wear, improper or careless usage, the use of inappropriate operating materials or replacement materials, defective construction work, inappropriate ground surface supporting the unit, or chemical, electromagnetic, or electric influences, unless these are the responsibility of the supplier.

d. The buyer shall grant the supplier the necessary time and opportunity to enable the remedies and replacement deliveries apparently necessary according to the reasonable discretion of the supplier, or the supplier shall be exonerated from its liability for defects. The buyer shall only be entitled to remedy the defect remedied itself or through a third party and demand compensation for the necessary costs incurred in urgent cases where operational safety is endangered or disproportionately serious damage must be avoided, in which case the supplier shall be informed immediately, or in cases where the supplier is in default on its obligations to remedy the defect.

e. Of the direct costs arising from remedy or replacement delivery, inasmuch as the claim is justified, the supplier shall carry the costs of the replacement part including shipping as well as commensurate costs for dismantling and installing and, if this can reasonably be demanded due to the individual circumstances of the claim, any costs arising for the provision of fitters and other workers. The buyer shall carry all other costs.

f. The guarantee period shall be three months for the replacement part and remedy work, or in any case up to the end of the original guarantee period for the delivery. The period of liability for defects on the delivered goods shall be extended by the duration of the downtime incurred by the remedy work.

g. Any inappropriate alterations or repairs carried out by the buyer or a third party without the prior approval of the supplier shall result in the cessation of liability for any consequences.

h. The buyer shall not be entitled to further claims, especially in connection with repairs to damage not affecting the delivered goods themselves.

This disclaimer shall not apply to intent, grave negligence of the owner or management employee, or to culpable breach of major obligations arising from the contract. The supplier shall only be liable for culpable breach of major contractual obligations for damages that are foreseeable and typical for the type of contract involved except in cases of intent or grave negligence on the part of the owner or a management employee.

Additionally, the disclaimer shall not apply to cases where the supplier is liable according to German product liability law for injury or property damage on privately used objects arising from defects in the delivered goods. It shall also not apply to the absence of

properties that have been explicitly guaranteed where this guarantee was specifically intended to protect the buyer in cases of damage occurring to objects other than the delivered goods.

i. The supplier shall not be liable for defects in prototypes unless Pt. h., Para. 2 or 3 apply.

8. Right of the buyer to withdraw and miscellaneous liability of the supplier

a. The buyer may withdraw from the contract if the whole performance of obligations has become permanently impossible for the supplier. The buyer may also withdraw from the contract if the delivery of a part of the contract in cases where similar goods have been ordered should prove impossible regarding quantities, and the buyer has a justifiable reason to refuse a part delivery; if this is not the case, the supplier may reduce payment accordingly.

b. If the supplier is in default on contract performance and if the buyer grants the supplier in default a commensurate period with the explicit declaration that the supplier will refuse to accept the contract performance after this period, and if the supplier fails to perform within this period, the buyer is entitled to withdraw.

d. If this impossibility should arise during delayed acceptance or the fault of the buyer, the supplier's claim for payment shall remain unaffected.

e. The buyer shall also have the entitlements conferred by BGB §634a No. 3 if the supplier culpably fails to adhere to the reasonable deadline set for remedy or replacement with reference to a defect for which the supplier is responsible in the sense of the terms of delivery. The rights of the buyer also remain unaffected in other cases where the attempts of the supplier to remedy or replace defective delivered goods fail.

f. The buyer shall have no further claims to compensation, especially to contract termination, price reduction or compensation for damages of whichever type, also concerning damages that do not directly affect the delivered goods themselves.

This liability disclaimer does not apply in cases of intent, grave negligence on the part of the owner or management employee, or in cases of culpable breach of major contractual obligations.

In cases of culpable breach of major contractual obligations, the supplier shall only be held liable for damages that are typical and reasonably foreseeable for the type of contract except in cases of intent or grave negligence on the part of the owner or management employees.

This liability disclaimer also does not apply in cases of liability for according to German product liability law injury or damage to property from privately used objects resulting from defects in the delivered goods. It also does not apply in the absence of properties explicitly guaranteed where such properties were specifically intended to protect the buyer against damage to objects other than the delivery goods themselves.

9. Reservation of title

The delivered goods shall remain the property of the supplier until payment has been made in full.

If the buyer sells the delivered goods on, all claims from the sale of the buyer, including

all incidental entitlements, from its own buyer shall be regarded as assigned to the supplier until all claims for the delivery of goods of the supplier have been settled in full.

The buyer shall immediately inform the supplier by recorded post of any lien, confiscation or exercising of claims by third parties affecting the delivered goods.

If the buyer is not capable of returning the delivered goods including accessories in an acceptable condition, it shall be liable for all damages arising.

10. Installation and assembly

In cases where fitters are required, the following terms shall apply: the agreed daily or hourly rates shall be charged for each fitter. Travel time, work time and waiting time shall be regarded as work time. Additionally, travel costs to and from the location of work as well as for the transport of baggage and hand tools are to be carried by the buyer.

Further costs for accommodation and living expenses shall be carried by the supplier. Helper teams as well as scaffolding and lifting equipment shall be provided by the buyer on time at the cost of the buyer. The buyer shall confirm the working hours of the fitters daily in writing. The buyer shall also issue the fitters with a written certificate confirming the end of the installation and assembly.

11. General

Additional oral agreements shall only apply if confirmed in writing.

The contract shall remain binding even where individual provisions should prove invalid.

The place of delivery and payment is Radevormwald. Both parties shall agree that Wipperfürth Amtsgericht (municipal court) shall have court jurisdiction; however, the supplier shall be entitled to file its claims at courts that have jurisdiction at the location of the headquarters of the buyer.