



Terms and conditions of sale and payment

Terms and conditions of sale and payment

§ 1 Scope of the General Terms and Conditions

- (1) The Supplier's deliveries, services and offers are made solely on the basis of these General Terms and Conditions. Thus, these General Terms and Conditions shall also apply to all future business relations, even if not explicitly agreed upon again. At the latest, these General Terms and Conditions shall be considered accepted upon acceptance of the goods or services. Any counter confirmations made by the Customer with reference to its own terms and conditions are hereby rejected.
- (2) All agreements made between the Supplier and the Customer for the purpose of the fulfilment of this contract must be in writing.

§ 2 Offer and Conclusion of Contract

- (1) Offers made by the Supplier are non-binding and subject to change. Any declarations of acceptance and all orders require the Supplier's confirmation in writing or by fax to be legally binding. The contract is deemed to be concluded upon the Supplier's sending a written declaration (acknowledgement of order), which shall be the decisive document determining the scope of its obligations. The delivery substitutes a written acknowledgement of order.
- (2) The performance parameters specified in our catalogues and offers, such as illustrations, drawings etc., shall be considered as approximate only. Drawings, illustrations, dimensions, weights or other performance data are only binding if they have been explicitly agreed on in writing. The Supplier reserves, without restriction, all rights of ownership and copyright to any quotations, drawings and other documents (hereinafter collectively referred to as the "Documents"). These Documents may not be made accessible to any third parties without the Supplier's prior consent; should the order not be placed with the Supplier, such documents are to be returned to the Supplier immediately on request.
- (3) The Supplier's sales staff is not authorised to make any verbal collateral agreements or to give any verbal assurances that go beyond the content of the written contract.
- (4) The Customer is liable for the accuracy, correctness and completeness of the order documents and order information provided by it; this includes in particular drawings as well as technical specifications and samples. Any verbal information, also with regard to modifications or amendments to the documents and data already submitted, must be confirmed in writing. If an order is neither confirmed in writing nor executed by the Supplier within one month of its receipt, or in particular cases (e.g. in case of custom-made products) within three months of receipt – in which case the Customer is bound by its order during such period – the Customer shall be entitled to revoke its order without having the right to claim damages from the Supplier.

§ 3 Prices

- (1) Unless stated otherwise, the Supplier is bound by the prices given in its quotations for a period of 30 days from their date of issue. Otherwise the prices mentioned in the Supplier's acknowledgement of order shall apply, which do not include the applicable legal value added tax, nor any cost of installation, start-up and assembly. Additional deliveries and services will be invoiced separately.
- (2) Unless otherwise agreed, the prices are FOB Ludden warehouse, excluding packaging, freight, postage and insurance cost. The type of packaging shall be chosen by the Supplier at its discretion. The packaging shall be invoiced to the Customer at cost price and will not be taken back by the Supplier.

§ 4 Time of Delivery and Performance / Acceptance

- (1) Delivery dates or periods, which may be agreed upon in a binding or non-binding manner, must be specified in writing. Our delivery period begins with the date of our acknowledgement of order, provided that at this time all of the documents required from the Customer, the necessary permits, releases, clarifications and approvals of plans have been submitted and the agreed payment terms and other obligations have been fulfilled and, in addition, any and all technical issues that were still open when the contract was signed have been mutually agreed upon. If these prerequisites are not met in time, the delivery period will be prolonged accordingly.
- (2) The Supplier is not liable for delays in delivery and performance, even if binding dates and times have been agreed upon, in cases of force majeure or in case of circumstances which substantially and not only temporarily impede the delivery or make it impossible - this includes in particular strike, lock-out, government orders, malfunction or breakdown of important production facilities/machines, delays in the supply of essential raw materials and utilities, delays in transport, etc.; this applies also when these circumstances affect our suppliers or their sub-suppliers. In such cases, the Supplier shall be entitled to delay the supply and/or performance for the duration of the hindrance plus an appropriate start-up time or to withdraw totally or in part from that part of the contract which is not yet fulfilled.
- (3) If the hindrance lasts for longer than 3 months, the Customer shall be entitled, after granting a reasonable extension of time, to withdraw from that part of the contract which is not yet fulfilled. Should the delivery time be extended or should the Supplier be released from its obligations, the Customer shall have no right to claim compensation for damages. The Supplier may only invoke the aforementioned circumstances, if the Customer is informed accordingly without delay.
- (4) In as far as the Supplier is responsible for the non-compliance with bindingly promised deadlines and dates, or in as far as the Supplier is in default, the Customer shall be entitled to compensation for delayed performance at the amount of 1/2% of the invoice value for each complete week of the delayed performance, but limited in total to a maximum of 5% of the invoice value of all deliveries and services affected by the delay. Any claims beyond this are excluded, unless the delayed performance is based on at least gross negligence by the Supplier.
- (5) The Supplier is at all times entitled to make partial deliveries or to render partial services, unless such partial deliveries or partial services are not of interest to the Customer.
- (6) If a formal acceptance procedure of the delivered materials is desired, the conditions of such procedure must be established at the latest upon conclusion of the contract. The acceptance procedure must be carried out at the Supplier's premises immediately after it has declared its readiness for acceptance. The cost of the acceptance procedure shall be borne by the Customer. Partial deliveries are permissible.
In all other cases, the delivery object is deemed to be accepted when it is taken into operation in accordance with its intended use, however at the latest 3 weeks after delivery to the Customer.
- (7) If the Customer is in default of acceptance, the Supplier shall be entitled to claim compensation for any damages it has incurred; upon default of acceptance, the risk of accidental deterioration or accidental loss passes to the Buyer.

§ 5 Transfer of Risk

The risk is transferred to the Customer as soon as the consignment has been handed over to the person responsible for the transport or has left the Supplier's warehouse for the purpose of dispatch, irrespective of who bears the freight costs. If the delivery is delayed upon the Customer's request, the risk shall pass to the Customer when the notice is given that the goods are ready for delivery. Any storage costs incurred after the transfer of risk shall be borne by the Customer. At the Customer's request and expense, the Supplier shall insure shipments against the usual transport risks.

§ 6 Customer's Rights in Case of Defects

- (1) The products are delivered free of defects in design, manufacturing and materials; the period for assertion of claims for defects is one year from the transfer of risk. This does not apply to claims for damages caused by defects. In case of claims for damages caused by defects, section 13 shall apply.

Terms and conditions of sale and payment

- (2) Should the Supplier's operating or maintenance instructions not be observed, or should the products be modified, parts exchanged or consumables used which do not comply with the original specifications, then any claims for defects of the products shall become void, if the Customer cannot refute a relevant substantiated statement claiming that one of these circumstances has caused the defect. The same applies if the deficiencies are due to poor installation, wrong assembly, poor maintenance, defective or negligent treatment or storage, defective repairs not executed by the Supplier, modifications made without our written consent, excessive load, unsuitable conditions of use and inappropriate operating materials or to any chemical, electro-chemical or electrical influences for which we are not responsible as well as weather or other natural influences.
- (3) Any claims made by the Customer relating to defects require the Customer to have duly fulfilled its obligations according to section 377 of the German Commercial Code (HGB) in terms of examining the goods and lodging a complaint, otherwise any claims shall be insubstantial: The Customer shall notify the Supplier's customer service manager of any defects in writing immediately, at the latest within one week of receipt of the delivery. In case of defects which cannot be detected within this period despite careful inspection, the Supplier shall be informed in writing immediately after they have been discovered.
- (4) If the Customer has notified the Supplier of a defect, the Supplier shall demand, at its choice and expense, that either:
- the defective part or unit be sent to the Supplier for repair and subsequent return; or
 - the Customer shall keep the defective part or unit ready and the Supplier shall send a service technician to carry out the repair on the Buyer's premises.
- Should the Customer request that rectification work be carried out at a certain location, the Supplier may do so; in this case, any exchanged parts shall not be invoiced, however, working time and travelling expenses shall have to be paid according to the Supplier's standard rates.
- (5) If the rectification should fail after an appropriate period, the Customer can, at its choice, either demand a price reduction or withdraw from the contract.
- (6) Liability for normal wear is excluded.
- (7) Only the immediate Customer is entitled to claims due to defects against the Supplier and such claims are not transferable.
- (8) In case of parts used for completion, refurbishment or modification sent by the Customer to the Supplier, the latter will assume no liability for their behaviour during processing; should the materials become damaged during processing, the Supplier shall be indemnified for the processing costs incurred up to that point, unless the damage is due to an intentional or grossly negligent breach of duty by the Supplier or its vicarious agent or a breach of duty that is of material importance to the object of the contract. This limitation of liability does not apply to personal injury or death.

§ 7 Replacement Parts

For a period of five years following delivery of a machine, the Supplier shall deliver replacement parts for that machine at the current prices.

§ 8 Retention of Title

- (1) Until settlement of all accounts receivable to which the Supplier should be entitled from the Customer now or in future arising from any legal grounds (including all balance claims from current account), the following securities shall be granted to the Supplier, which it will release on request at its choice insofar as their value exceeds the accounts receivable lastingly by more than 10%.
- (2) The goods remain the property of the Supplier. Processings or modifications of the goods are always made for the Supplier as manufacturer, but without any obligation for it. Should the Supplier's (co-)ownership expire as a result of combination of items, it is agreed upon already now that the Customer's (co-)ownership of this combined item is transferred to the Supplier in a pro rata manner (with regard to the invoice value). The Customer shall store the Supplier's (co-)property free of charge. Goods for which the Supplier is entitled to (co-)ownership will hereinafter be referred to as 'goods under reservation'.
- (3) The Customer is entitled to process and sell the goods under reservation in proper business dealings, provided that it is not in default of payment. Pledging or assignment as security is inadmissible. Any other accounts receivable (including all balance claims from current account) arising from resale or any other legal ground (insurance, unlawful act) regarding the goods under reservation are already now assigned in full by the Customer to the Supplier as security. The Supplier authorises the Customer irrevocably to collect the accounts receivable transferred to the Supplier for the Supplier's account in its own name. This collection authorisation can only be revoked if the Customer does not duly meet its payment obligations.
- (4) Should any third parties have access of any kind to the goods under reservation, especially by orders of attachment, the Customer shall draw attention to the fact that the goods are the Supplier's property and shall inform the Supplier immediately, so that the Supplier can enforce its rights of ownership. In as far as the third party is unable to reimburse the Supplier for judicial or out-of-court costs arising in this context, the Customer shall be liable for such costs.
- (5) In the event of conduct in violation of the contract on the part of the Customer – in particular default of payment – the Supplier shall be entitled to withdraw from the contract and to demand the return of the goods under reservation.
- (6) Up to the complete payment of the goods under reservation, the Customer is obliged to keep the Supplier informed about the location of the goods under reservation at any time.

§ 9 Payment

- (1) Unless agreed otherwise, the Supplier's invoices are payable 30 days after invoicing without deductions.
The Supplier is entitled, despite provisions made by the Customer stipulating otherwise, at first to credit payments made by the Customer against its older debts and shall inform the Customer of the type of transaction made. In the case that expenses have been incurred or interest accrued, the Supplier is entitled to credit the payment at first against the expenses, then the interest and finally against the main service.
- (2) A payment is deemed to have been made only when the Supplier has the amount at its disposal. In case of cheques the payment is deemed as having been made when the cheque is cashed.
- (3) Should the Customer be in default of payment, the Supplier shall be entitled to demand interest at a rate of 8 percentage points above the base rate as lump-sum compensation from the relevant time onwards. A lower rate is to be applied if the Customer can provide evidence of a lower burden; the Supplier may provide evidence of a higher damage.
- (4) Should the Supplier learn of any circumstances that call the Customer's credit standing into question, in particular in case that a cheque is not cashed or payments are suspended, or should the Supplier learn of any other circumstances which call the Customer's credit standing into question, the Supplier shall be entitled to deem the total remaining debt as due, even if it has accepted cheques. In this case the Supplier is also entitled to demand payments in advance or securities.
- (5) The Customer is only entitled to set-off, retention or reduction, even in case that complaints have been made or compensating claims pleaded, when the compensating claims have been determined to be final and beyond dispute. The Customer is, however, also entitled to retention due to compensation claims arising from the same contractual relationship.

Terms and conditions of sale and payment

§ 10 Design Changes

The Supplier reserves the right to make design changes at any time; however, it is not obliged to include such changes also in products already delivered.

§ 11 Patents

- (1) In case of custom-made products, the examination and the liability with respect to any third party's property rights is exclusively the responsibility of the Customer. The Customer shall be responsible towards the Supplier in full scope that any third party's property rights will not be infringed hereby and shall hold the Supplier harmless from any possible claims for damages made by third parties due to such an infringement.
- (2) The Supplier, in turn, shall indemnify the Customer and its customers with regard to claims arising from violation of copyrights, trademarks or patents, unless the design of a delivery item originates from the Customer. As far as the amount of the indemnification is concerned, the Supplier's obligation to indemnify is limited to the expected damage. An additional prerequisite for the indemnification is that the conducting of legal proceedings is to be left to the Supplier and that the stated violation of rights is to be assigned exclusively to the design of the Supplier's delivery items without combination or usage together with other products.
- (3) The Supplier has the choice to release itself from the obligations taken on in paragraph 1 by either
 - a) procuring the required licences with regard to the alleged violated patents
or
 - b) putting an altered delivery item or parts thereof at the Customer's disposal, which in case of exchange with the violating delivery item or part thereof will eliminate the accusation of violation with regard to the delivery item.

§ 12 Secrecy

The Supplier's technical documents, drawings, service and operating manuals as well as any and all information received from the Supplier during the contract negotiations regarding the function and the structure of the goods are subject to secrecy. The Customer agrees to prevent unauthorized persons from getting access to the corresponding information.

- (2) Unless expressly otherwise agreed in writing, the information submitted to the Supplier in connection with the orders are deemed as non-confidential.

§ 13 Liability

- (1) Claims for damages are excluded regardless of the type of violation, including unlawful acts, insofar as they are not due to intention or gross negligence.
- (2) As far as the violation of material contractual obligations is concerned, the Supplier is liable for any negligence, however only up to the amount of the foreseeable damage. Claims for lost profit, saved expenditure, claims for damages by third parties as well as claims for other indirect and consequential damages cannot be made unless an essential quality feature guaranteed by the Supplier has the express purpose of protecting the Customer from such damage.
- (3) The liability limitations and exclusions in paragraphs 1 and 2 are not applicable to claims which are due to deceitful conduct on the part of the Supplier, nor in case of a liability for guaranteed quality features, nor to claims according to the product liability law, nor to injuries to life, body or health.
- (4) Insofar as the liability of the Supplier is excluded or limited, this shall also apply to the Supplier's clerical staff, employees, representatives and vicarious agents.

§ 14 Final Provisions

- (1) A transfer of the contractual rights and obligations to third parties by the Customer is not permitted unless the Supplier has given its written consent.
- (2) These General Terms and Conditions and the complete legal relationship between Supplier and Customer are subject to the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.
- (3) Bückebug shall be the exclusive place of jurisdiction for any disputes arising directly or indirectly out of the contractual relationship if the Customer is a trader, a legal person under public law or a special fund under public law. The Supplier shall also have the right to institute legal proceedings at the Customer's place of business.
- (4) In accordance with section 33 of the German Data Protection Law (BDSG) it is hereby pointed out that the Customer's data will be stored by the Supplier. These data will be processed in accordance with both the Federal Data Protection Law (BDSG) and the Teleservices Data Protection Law.
- (5) Should one of the provisions of these General Terms and Conditions or a provision of any other agreement be or become ineffective, this will not affect the validity of any other provisions or agreements.