

general conditions of sale**I. General Terms**

1. For the scope or delivery or services (hereinafter referred to as: Deliveries) the mutual written statements shall be decisive. The Purchaser's general business conditions (Conditions of Purchase) are only relevant insofar as we have explicitly agreed to them in writing.
2. We reserve the unrestricted proprietary exploitation rights and copyrights in cost estimates, drawings and other documents (hereinafter referred to as: Documents). These may only be made accessible to third parties with our prior approval and shall immediately be returned should the order not be placed. Documents provided by the Purchaser may be made accessible to any third party to whom we permissibly issue supply contracts.
3. For such order-related software specifically developed by/for us the Purchaser has the non-exclusive right of use. On the other hand, the Purchaser may make backup copies without explicit agreement.
4. Partial deliveries are permissible if they are considered reasonable for the Purchaser.

II. Offer and Conclusion of Contract

1. Our offers are subject to alterations with respect to availability, delivery time and price as well as to prior sale. Delivery obligation only arises after the order has been placed/confirmed by us.
2. Insofar as we do not manufacture ourselves the following terms shall apply: We do not accept responsibility for procurement risk; we are entitled to withdraw from the contract in case we do not obtain the delivery item although a purchase/supply contract has been previously concluded. Our liability for intention and gross negligence remains unaffected. The Purchaser shall immediately be notified should the delivery item not be available on time and, if he wishes to withdraw from the contract, we will immediately exercise the right to withdraw.
3. Orders the Purchaser has placed with us are binding. They shall be deemed accepted if not informally, at the latest by written confirmation or, in case of prompt delivery, by issuing an invoice, unless immediately rejected in writing.
4. Details on the delivery item, regardless of their form, shall be considered as approximate; they shall only be considered as agreed guarantee of quality or durability if stated accordingly for specific details. The fields of
 - Engineering
 - Documentation
 - Manufacture
 - Delivery
 - Installation
 - Commissioning
 - Test Operationare separate service sections and shall be remunerated separately. They constitute subject matter of the contract only if explicitly agreed.
5. If the Purchaser provides dimensional sketches for specifying the delivery item, faults and ambiguities leading to faulty products/delivery shall be on the Purchaser's account. The same applies to specification of numbers, net weights, materials, quality and notification of each intended purpose as well as material strength, surface hardness and fabrication. The Purchaser shall also be liable for the correctness of such specifications in such cases where we provide engineering support; for this reason it is the responsibility of the Purchaser to verify correctness and completeness of his specifications should they be submitted again to the Purchaser for the purpose of approval.
6. The obligation of the parties to this contract remains unaffected by public and/or private law approvals, requirements or declarations by third parties. Temporary stoppage of services (suspension) on the part of the Purchaser is excluded.
7. Oral side agreements require the written form, as does a waiver of the written form. Should one of the parties refer to a fixed price agreement, he shall provide proof thereof.

III. Prices and Terms of Payment

1. Prices are ex-works excluding packaging, plus the applicable legal sales tax.
2. If we undertake to install or assemble, commission or participate in test operations and no other agreement has been made, apart from the agreed fee the Purchaser shall bear the required additional costs for technicians, assemblers, commissioning engineers, electricians, fitters according to our normal hourly rate. Hourly rates apply to a working day of ten hours per calendar day. Employment exceeding ten hours shall be paid in accordance with the usual surcharges. Furthermore, the Purchaser shall bear additional costs such as travel costs, costs for transporting tools and personal belongings as well as clearing costs. It shall be the responsibility of the Purchaser to organise counter-signature of time sheets and notify us.
3. Payments shall be made to the contractor per domicile Munster.
4. The Purchaser can only set off payments against claims which are undisputed and have been legally established.

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1. The delivery item (goods supplied under reservation) remain our property until any claims against the Purchaser resulting from the business relationship have been fulfilled. Insofar as the value of all security interests we are entitled to exceed the amount of all secured claims by more than 20%, we shall relinquish those parts of the security interests exceeding 20%.
2. While the reservation of title exists the Purchaser is not entitled to pledge goods or assign them as security; resale shall only be permitted to resellers in the usual course of business and only on condition that the reseller receives payment from his customer or includes the proviso that the property shall not pass to the customer until the latter has met his payment obligations.
3. Otherwise the following shall apply: The Purchaser shall already now assign to us all future claims from sales of goods supplied under reservation to his customers and undertake to safeguard our rights, in particular to notify us immediately on a resale. The assigned claim serves as security only in the amount corresponding to the value of the sold goods supplied under reservation.
4. Moreover the following shall apply: If Purchaser incorporates the goods supplied under reservation as an essential component into the property of a third party, he assigns to us already now all claims for remuneration against his customer in the amount corresponding to the value of the goods supplied under reservation with all rights and with priority over all other debts. If Purchaser incorporates the goods supplied under reservation as a significant component into his own property, he assigns to us already now any claims resulting from sales of this property or of claims resulting from property rights in the amount corresponding to the value of the goods supplied under reservation with all rights and with priority over all other debts.
5. If the goods supplied under reservation are treated or processed or combined, we are entitled to the resulting item in the relation of the value of the goods supplied under reservation to the new item. Our proprietary rights shall remain effective if the new item is sold/integrated as described above with regard to the Purchaser's claims against his contract partner.
6. In case of breach of duty on part of the Purchaser, in particular default of payment, we are entitled to withdraw or revoke after unsuccessful expiry of a reasonably scheduled period; legal provisions on the dispensability of setting a deadline remain unaffected. The Purchaser is obliged to return the goods. The mere demand for return of goods does not constitute a declaration of withdrawal from the contract.

V. Delivery Periods; Default of Delivery

1. Maintenance of delivery periods is conditional to timely receipt of all Documents we require, the required approvals and releases, particularly of plans, and that the Purchaser meets all payment conditions and other obligations. If these conditions are not met in due time, the deadlines will be extended appropriately; this does not apply if the delay is justifiable.
2. If the delay is the result of force majeure, e.g. mobilization, war, civil unrest, or similar events such as strike, lock-out, etc., deadlines will be extended appropriately.
3. Delivery dates (incl. documentation deadlines, execution deadlines) are only binding if they have been explicitly agreed in writing or on a calendar basis. In case of delays resulting from late or insufficient service delivery from a sub-contractor assigned by the Purchaser, our liability is excluded; default of delivery shall be attributed to the Purchaser.
4. Claims for damages made by the Purchaser on account of delays in delivery, claims for damages in lieu of performance are excluded in any case of delayed delivery, also after the set deadline has expired. This does not apply if liability is legally mandatory in cases of intention, gross negligence or injury to life, body and health. The Purchaser may only withdraw from the contract within legal provisions if we are responsible for the delay. A change in the burden of proof to the disadvantage of the Purchaser is not included in the provisions laid down above.
5. The Purchaser is obliged to declare within a reasonable period of time whether he intends to withdraw from the contract on account of the delay in delivery or whether he insists on delivery.
6. Should dispatch, delivery or installation be delayed upon request of the Purchaser by more than two weeks after notification of the readiness to dispatch, we are entitled to charge a storage/order fee in the amount of 0.5%, of the price of the good to be delivered for each commenced week of default, but not more than 5 per cent in total. Both parties to the contract are entitled to provide verification of higher or lower storage/order costs.

VI. Transfer of Risks

1. The risk shall be transferred to the Purchaser, even in case of delivery freight paid, as follows:
 - a) In case of shipment without installation or installation including transfer to the shipper (forwarder) or collector. On request and account of the Purchaser we will insure shipments against the usual transport risks;
 - b) In case of shipment including installation – regardless of negotiations on acceptance – on the day of the actual receipt of goods or installation in buildings or - if components are delivered - in a complete system; it is the responsibility of the Purchaser to protect the products, components and equipment delivered by us from possible damage.
2. Should shipment, delivery, start or execution of installation be delayed by causes for which the Purchaser is responsible or should the Purchaser be in default of acceptance for other reasons, the risk shall be transferred to the Purchaser as from the day he enters into default.

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Insofar as no other agreement has been made in written form, the following provisions shall apply:

1. The purchaser shall undertake and provide in a timely manner and at his cost:
 - a) All foundation, construction and other ancillary work corresponding to the static requirements of the system including related skilled workers, materials and tools,
 - b) Equipment and materials necessary for installation and startup, such as scaffolding, lifting tools and other devices, fuels and lubricants,
 - c) Energy and water to the place of usage including connections, heating and lighting,
 - d) Sufficiently large, suitable, dry and closed rooms for storing machine parts, repairs, materials, tools, etc. at the place of installation, as well as appropriate work and common rooms for the workers including suitable sanitary facilities; apart from this, the Purchaser shall provide all measures on the construction site necessary to protect the property and the delivery personnel in such a manner as he would take to protect his own property,
 - e) Protective clothing and devices required as appropriate to the special circumstances of the building site.
2. Prior to installation the Purchaser shall provide the information necessary for positioning the system, system parts and components, on the position of concealed power, gas or water pipes or other installations.
3. Prior to installation all provisions and equipment/connections required to start the works must be on the installation site and all preliminary work required to start operating must have progressed to such an extent that installation or installation can be initiated and executed as agreed without interruptions. Access paths and the site of installation or installation must be plain and cleared.
4. Should installation, installation or commissioning be delayed by circumstances we are not responsible for, the Purchaser shall bear the costs for idle time or additional journeys up to a reasonable amount.
5. The Purchaser shall notify weekly the duration of work of the installation personnel and immediately certify completion of installation, installation and commissioning.
6. Should we, after completion, request acceptance of the delivery, the Purchaser shall do this within one week; when this period has expired, acceptance is deemed to have taken place. Acceptance is also deemed as have taken place if the delivery has been taken into use; this shall also apply when the Purchaser or a third party assigned by the Purchaser have concluded completion work.

For clarification: Acceptance does not depend on commissioning or execution of test operations.

VIII. Acceptance

The Purchaser must not refuse acceptance of our delivery on account of insignificant defects.

IX. Material Defects

For material defects we assume liability as follows:

1. All workpieces, showing defects within the warranty period - regardless of their time of operation - shall be repaired or replaced at our discretion provided the defect was already present at the time of transfer of risks.
2. Claims for material defects lapse after 12 months. This does not apply if longer periods are statutory in accordance with Art. 438 Sect. 1 No. 2 (Buildings and Items Used for Buildings), 479 Sect. 1 (claim for compensation) and 634 a Sect. 1 No. 2 (Construction Defects) BGB (German Civil Code) as well as in cases of injury to life, body and health, deliberate or grossly negligent breach of duty we are responsible for, or fraudulent concealment of defects. Statutory provisions on suspension, interruption and recommencement of deadlines remain unaffected.
3. The Purchaser shall immediately notify us in writing of material defects.
4. In case of notification of defects payments by the Purchaser may only be withheld in such an amount as is appropriate in relation to the defects that have occurred and that are asserted beyond doubt. If a defect complaint is unjustified, we are entitled to claim compensation from the Purchaser for any expenses incurred by us.
5. First we shall be given the opportunity to remedy the defect within a reasonable period.
6. Should supplementary performance fail, the Purchaser may withdraw from the contract - in accordance with paragraph XII. (other claims for damages) - or reduce remuneration irrespective of any rights to damages.
7. Claims for defects do not exist in case of insignificant deviations from the agreed quality, insignificant impairment of the contractually agreed technical specifications and functions as well as insignificant impairment of usability, natural wear or damage after the transfer of risk resulting from faulty or negligent handling, excessive workload, unsuitable equipment, deficient works, unsuitable land or defects resulting from special external influences that are not preconditions in accordance with the contract. If the Purchaser or third parties make improper alterations or repairs, no claims for defects can be asserted from these or consequences resulting from them.
8. Claims made by the Purchaser on account of necessary expenses for the purpose of rectification, in particular transport, travel, work and material costs, are excluded insofar as the expenses increase because the item of delivery is subsequently transported to a place other than agreed.

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9. Rights of recourse by the Purchaser against us in accordance with Art. 478 BGB (Recourse by the Company) only exists if the Purchaser has not concluded any agreement exceeding statutory claims for defect with his customer. Clause No. 8 above applies correspondingly to the scope of the Purchaser's rights of recourse against us in accordance with Art. 478 Sect. 2 BGB.
10. For claims for damages furthermore Paragraph XII. (Other Claims for Damages) applies.. Further or claims other than those described in this paragraph made by the Purchaser against us and our agents on account of material defects are excluded.

X. Industrial Property Rights and Copyrights; Legal Defects

1. If not agreed otherwise we shall be obliged to provide deliveries free from industrial property rights and copyrights of third parties (hereinafter referred to as property rights) only in the country of the delivery destination. If a third party makes justified claims against the Purchaser on account of infringement of property rights through deliveries provided by us and used according to contract, we shall be held liable towards the Purchaser within the period determined in Paragraph IX. No. 2 as follows:
 - a) We shall, at our discretion and at our expense, either obtain a right of use for the delivery in question, change it to such an extent that property rights are not infringed, or replace it. Should this not be possible at suitable conditions, the Purchaser shall be entitled to the statutory rights of withdrawal or reduction of price.
 - b) Our obligation to payment of damages is covered under Paragraph XII.
 - c) The obligations mentioned above only apply provided the Purchaser immediately notifies us in the written form about claims asserted by third parties, does not acknowledge an infringement and leaves to our discretion any protective measures and settlement negotiations. Should the Purchaser cease to use a delivery on account of mitigation of damage or other important reasons, he shall be obliged to inform the third party that cessation of use does not constitute acknowledgement of an infringement of property rights.
2. Claims by the Purchaser are excluded if he is responsible for infringement of property rights.
3. Claims by the Purchaser are also excluded if an infringement of property rights is caused by special provisions made by the Purchaser, by usage we could not foresee or by the fact that the delivered items have been changed by the Purchaser or mounted on products we have not delivered.
4. In case of infringements of property rights the claims of the Purchaser as regulated in No. 1a) above shall apply, in all other cases the provisions of Paragraph IX, No. 4, 5 and 9 apply correspondingly.
5. In case of other legal defects the provisions laid down in Paragraph IX apply correspondingly.
6. Further claims or claims deviating from the claims regulated here and asserted by the Purchaser against us or our agents on account of legal defects are excluded.

XI. Impossibility, Contract Adjustment

1. Should delivery be impossible, the Purchaser is entitled to claim damages unless we are not responsible for the impossibility. However, claims for damages by the Purchaser are limited to 5% of the value of that part of the delivery which cannot be taken into purposive operation due to impossibility. This limitation does not apply when liability is legally mandatory in cases of intention, gross negligence or injury to life, body or health; this does not lead to change in the burden of proof to the disadvantage of the Purchaser. The Purchaser's right to withdraw from the contract remains unaffected.
2. Should unforeseeable events have a significant impact on the commercial relevance or our business, the contract shall be adapted accordingly in good faith. If economically justifiable, we are entitled to withdraw from the contract.

XII. Other Claims for Damages

1. Claims for damages or expenses on part of the Purchaser (hereinafter referred to as claims for damages), regardless of the legal ground, in particular due to infringement of duties resulting from the contractual obligation or unlawful acts are excluded.
2. This does not apply in cases where liability is legally mandatory, e.g. in cases of injury of life, body or health, on account of violation of essential contractual obligations. However, claim for damages in case of violation of essential contractual obligations is limited to typical contractual foreseeable damage unless arising from intention or gross negligence or due to injury life, body or health. The provisions laid down above do not lead to a change in the burden of proof to the Purchaser's disadvantage.
3. Insofar as the Purchaser is entitled to damages in accordance with the provisions laid down above, these shall lapse after the statutory period of limitation applicable to material defect claims. In case of claims for damages in accordance with the product liability law the statutory provisions concerning the period of limitation shall apply.

XIII. Jurisdiction and Applicable Law

1. The general place of jurisdiction is Munster in case of all disputes resulting directly or indirectly from the contractual relationship if the purchaser is a trader, a legal entity or a separate fund under public law. However, we are entitled to litigate at the Purchaser's headquarters.

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2. The legal relationship concerning this contract is governed by German substantive law with exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIV. Legal Validity of the Contract

Should individual provisions of this contract be legally ineffective, the remaining parts shall remain effective. This does not apply if adherence to the agreement should constitute undue hardship for either party.