

GTCs - General Terms and Conditions

For use in relation to:

1. A person acting in the scope of exercising its commercial or self-employed professional activity at the time the contract is concluded (entrepreneur).
2. Legal persons or legal entities under public law.

I. General

1. These terms and conditions as well as any separate contractual agreements shall form the basis of all deliveries and services. Deviating terms and conditions of purchase of the Customer shall not become part of the contract even upon acceptance of the order. Unless otherwise specially agreed, a contract shall be concluded with the Supplier's written order confirmation.
2. The Supplier shall reserve property rights and copyrights to samples, cost estimates, drawings and similar information, whether of a tangible or intangible nature, including information in electronic form; they must not be made accessible to third parties.
The Supplier undertakes to make information and documents designated as confidential by the Customer accessible to third parties with the Customer's consent only.

II. Price and Payment

1. Unless otherwise specially agreed, the prices are quoted ex works including loading at the factory, but excluding packaging and unloading. The respective statutory amount of VAT shall be added to the prices.
2. Unless otherwise specially agreed, the payment shall be made without any deductions to the Supplier's account, namely:
34% as advance payment following receipt of the order confirmation,
33% as soon as the Customer has been notified that the main components are ready for dispatch,
33% within one month following the passing of risk.
3. The Customer may only withhold payments or offset payments against counterclaims if such counterclaims are undisputed or have been recognized by declaratory judgment.

III. Delivery Period, Delay in Delivery

1. The delivery period arises from the agreements of the contracting parties. Compliance with the delivery period by the Supplier requires that all commercial and technical issues between the contracting parties have been resolved and that the Customer has fulfilled all of its obligations, such as providing the necessary official certificates or approvals or making the advance payment. If this is not the case, the delivery period shall be extended by a reasonable period. This shall not apply if the Supplier is responsible for the delay.
2. Compliance with the delivery period is subject to correct and timely delivery by the suppliers of the Supplier. The Supplier shall inform the Customer of any foreseeable delays as soon as possible.
3. The delivery period shall be considered observed when the delivery item has left the factory of the Supplier by the time it expires or readiness for dispatch has been notified. If acceptance of the shipment is required, the date of acceptance or, alternatively, the notification of the readiness for acceptance shall be decisive, except in case of a justified refusal of acceptance.
4. If the dispatch or acceptance of the delivery item is delayed for reasons attributable to the Customer, the Customer shall be charged the costs incurred as a result of the delay - starting one month after the notification of the readiness for dispatch or acceptance.
5. If the failure to comply with the delivery period is due to force majeure, labour disputes or other events beyond the control of the Supplier, the delivery period shall be extended by a reasonable period. The Supplier shall inform the Customer of the beginning and the end of such circumstances as soon as possible.
6. The Customer may withdraw from the Contract without setting a deadline if the Supplier is definitively unable to perform its obligations in full before the passing of risk. Furthermore, the Customer may withdraw from the contract if the performance of part of the delivery is impossible within the framework of an order and the Customer has a justified interest in refusing the partial delivery. If this is not the case, the Customer shall pay the contract price attributable to the partial delivery. The same shall apply in the event of the Supplier's inability to perform. Section VII.2 is otherwise applicable. If the impossibility or inability to perform arises during the delay in acceptance or if the Customer is solely or largely responsible for the prevailing circumstances, the Customer shall remain obliged to consideration.
7. If the Supplier is in default and the Customer suffers damage as a result of this, the Customer shall be entitled to demand a lump-sum compensation for delay. It shall amount to 0.5% for each full week of delay, but - in total - to not more than 5% of the value of the part of the total delivery that cannot be used on time or in accordance with the contract due to the delay.
If the Customer sets the Supplier a reasonable time period for performance - considering the statutory exceptions - and the deadline is not met, the Customer shall be entitled to withdraw from the contract within the framework of the statutory provisions.
Further claims due to delayed delivery are exclusively based on section VII. 2 of these terms and conditions.

IV. Passing of Risk, Acceptance

1. The risk shall pass to the Customer when the delivery item has left the factory, even if partial deliveries are made or the Supplier has taken on other services such as shipping costs or delivery and installation. If an acceptance is required, it shall be decisive for the passing of risk. It must be carried out immediately on the acceptance date or, alternatively, after the notification of the readiness for acceptance by the Supplier.
The Customer must not refuse acceptance in the event of a minor defect.
2. If the dispatch or acceptance is delayed or not performed due to circumstances not attributable to the Supplier, the risk shall pass to the Customer from the day of the notification of readiness for dispatch or acceptance. The Supplier undertakes to take out the insurances demanded by the Customer at the expense of the Customer.
3. Partial deliveries shall be permissible, provided that they are reasonable for the Customer.

V. Retention of Title

1. The Supplier shall retain title to the delivery item until all payments specified in the delivery contract have been received.
2. The Supplier shall be entitled to insure the delivery item, at the cost of the Customer, against theft, breakage, fire, water and other damage unless the Customer has demonstrably taken out the insurance itself.
3. The Customer must not sell or pledge the delivery item. Further, the delivery item must not be assigned by way of security by the Customer. In the event of seizures as well as confiscation or other third-party dispositions, the Customer must notify the Supplier thereof immediately.
4. In the event of behaviour contrary to the contract on the part of the Customer, in the event of default of payment in particular, the Supplier shall be entitled to take back the delivery item following a reminder. The Customer shall be obliged to surrender the delivery item.
5. Due to the retention of title, the Supplier can demand the surrender of the delivery item only if it has withdrawn from the contract.
6. The application to open insolvency proceedings shall entitle the Supplier to withdraw from the contract and demand the immediate return of the delivery item.

VI. Claims for Defects

The Supplier shall provide the following warranty for material defects and defects in title of the delivery under the exclusion of further claims - subject to section VII:

Material Defects

1. All those parts, which prove to be defective due to a circumstance prior to the passing of risk, shall - at the discretion of the Supplier - either be repaired or replaced without defects free of charge. If such defects are discovered, the Supplier must be informed in writing without delay. Replaced parts shall become the property of the Supplier.
2. Upon consultation with the Supplier, the Customer shall allow the Supplier the necessary time and opportunity for all subsequent improvements and replacement deliveries deemed necessary by the Supplier; otherwise, the Supplier shall be exempt from the liability for the resulting consequences. Only in urgent cases of endangerment of the operational safety or to prevent disproportionately extensive damage of which the Supplier has to be informed immediately shall the Customer have the right to rectify the defect itself or by third parties and claim reimbursement of the necessary expenses from the Supplier.
3. Regarding the direct costs incurred due to the repair or replacement, the Supplier shall bear the costs of the replacement item including the shipping costs if the complaint turns out to be justified. Further, the Supplier shall bear the costs of the disassembly and assembly as well as the costs of any necessary provision of the required fitters and assistants, including the travel expenses, provided this is not an unreasonable burden imposed on the Supplier.
4. Within the framework of the statutory provisions, the Customer shall have the right to withdraw from the contract if the Supplier - considering the statutory exceptions - allows a reasonable period set for the subsequent improvement or replacement delivery due to a material defect to elapse fruitlessly. If the defect is only of a minor nature, the Customer shall only be entitled to a right to reduce the contract price. Otherwise, the right to reduce the contract price shall be excluded. Further claims are based on section VII. 2 of these terms and conditions.
5. In particular, no warranty shall be provided in the following cases: Unsuitable or improper use, incorrect assembly or commissioning by the Customer or third parties, natural wear, incorrect or negligent handling, improper maintenance, unsuitable equipment, defective construction work, unsuitable foundation, chemical, electrochemical or electrical influences - provided that the Supplier is not responsible for them.
6. If a defect is rectified improperly by the Customer or a third party, the Supplier shall not be liable for the resulting consequences. The same shall apply if the delivery item is modified without the prior consent of the Supplier.

7. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the Supplier shall, at its own expense, basically entitle the Customer to continue use or modify the delivery item in such a manner reasonable for the Customer that there is no longer an infringement of property rights. If this is not possible under economically reasonable conditions or within a reasonable period, the Customer shall be entitled to withdraw from the contract. The Supplier shall also be entitled to withdraw from the contract under the aforementioned conditions. Furthermore, the Supplier shall exempt the Customer from undisputed claims or claims recognized by declaratory judgment on the part of the respective property right owners.
8. Subject to section VII. 2, the Supplier's obligations stated in section 7 are exhaustive regarding the infringement of property rights or copyrights.
They shall only exist if
 - The Customer informs the Supplier immediately of any claims made in relation to infringements of property rights or copyright.
 - The Customer supports the Supplier, to a reasonable extent, in the defence of the asserted claims or enables the Supplier to carry out the modification measures in accordance with section 7.
 - All defence measures including out-of-court settlements remain reserved to the Supplier.
 - The defect of title is not based on an instruction given by the Customer and
 - The infringement was not caused by the fact that the Customer has modified the delivery item without authorisation or has used the delivery item in manner not in accordance with the contract.

VII. Liability:

1. If the Customer cannot use the delivery item in accordance with the contract due to the Supplier's fault as a result of the non-implementation or deficient implementation of suggestions and advice given before or after the conclusion of the contract or due to the infringement of other secondary contractual obligations, instructions for the use and maintenance of the delivery item in particular, the provisions of the sections VI. and VII. shall apply accordingly, to the exclusion of further claims of the Customer.
2. The Supplier shall be liable for damage not caused to the delivery item itself - for whatever legal reasons - only
 - a) in case of intent
 - b) in case of gross negligence on the part of the owner/bodies or executive employees
 - c) in case of culpable injury to life, limb, health
 - d) in case of defects which the Supplier has fraudulently concealed or whose absence it has guaranteed,
 - e) in case of defects to the delivery item if there is a liability for personal injury or damage to privately used items under the Product Liability Act. In the event of a culpable infringement of essential contractual obligations, the Supplier shall also be liable for gross negligence of non-executive employees and for slight negligence - in the latter case limited to the reasonably foreseeable damage typical for the contract. Further claims shall be excluded.

VIII. Limitation

All claims of the Customer - for whatever legal reasons - shall become time-barred after 12 months. The statutory periods shall apply to the compensation claims under section VII.2 a-e. They shall also apply to defects in a building structure or to delivery items that were used for a building structure in accordance with their customary use and caused its defectiveness.

IX. Software usage

If software is included in the scope of delivery, the Customer shall be granted a non-exclusive right to use the delivered software delivered including its documentation. It shall be provided for the use on the delivery item intended for this purpose. Using the software on more than one system is prohibited.

The Customer may only reproduce, edit and translate the software, or convert it from the object code into the source code, to the extent permitted by law (§§ 69 a et seqq. of the German Copyright Law). The Customer undertakes not to remove manufacturer's specifications - copyright notes in particular - and not to change them without the prior express consent of the Supplier.

All other rights to the software and the documentation including the copies shall remain with the Supplier or the software supplier. Granting sublicenses is prohibited.

X. Applicable Law, Jurisdiction

1. The laws of the Federal Republic of Germany governing the legal relations between domestic parties shall exclusively apply to all legal relations between the Supplier and the Customer.
2. The court of jurisdiction shall be the court competent for the registered office of the Supplier. However, the Supplier shall be entitled to file a suit at the head office of the Customer.

Annex of the German Capital Goods Industry to the ECE General Terms and Conditions of Delivery for the Export of Machines and Plants

The following provisions contain the information provided in the Annex to the General Terms and Conditions of Delivery as well as other supplementary agreements of the contracting parties. In the event of a different interpretation of the German text and the text in the other language, the German wording shall be binding.

1. Regarding Art.1: All agreements of the contracting parties must be made in writing in order to be effective.
2. Regarding Art.3: The information provided in Art.3(1) shall only be binding if they are expressly referred as binding in the contract.
3. Regarding Art.5: Acceptance tests (Art.5(3)) shall only be carried out if they are expressly agreed in the contract.
4. Regarding Art.6: If the Seller undertakes to dispatch the item in the event of "ex works" sale at the Buyer's request, the risk shall pass to the Buyer upon the handover to the first carrier, provided that this date is earlier than the date specified in Art.6(2). If the Buyer does not accept the delivery item in the event of "ex works" sale due to a circumstance mentioned in Art.10, the risk shall pass to the Buyer no later than at the date this circumstance occurs.
5. Regarding Art.7: Another precondition for the commencement of the delivery period (Art.7(1)) is that an agreement has been reached with regard to all technical questions, the clarification of which the contracting parties have reserved for subsequent negotiations when concluding the contract, and that an official approval possibly required for the fulfilment of the Seller's obligations has been granted.
 The price discount (Art.7(3), Annex Pos. A and B) shall amount to 0.5% for each complete week. In total, it cannot exceed 5%. In case of Art.7(5) (Annex Pos. C), the parties shall be required to reach an amicable agreement.
 The amount of compensation shall be measured according to the circumstances of the individual case within the limits of 5 and 25% of the value of the delivery item's non-delivered part as determined in the contract. Any damage beyond this shall only be compensated in the event of intent, gross negligence and the culpable infringement of essential contractual obligations within the meaning of clause 11 of this annex sheet.
 The maximum amount of the damage sum according to Art.7(7) (Annex Pos. D) shall amount to 25% of the value of the relevant part of the delivery item as determined in the contract. The Buyer shall be entitled to furnish proof of a smaller damage of the Seller.
6. Regarding Art.8: The Seller shall be entitled to refuse its performance if it has grounds for concern that it will not receive the consideration of the Buyer in full and in good time due to a circumstance occurring after the conclusion of the contract (Art.8(5)). The interest rate (Art.8(7), Annex Pos. E) shall be 8% above the rate of the European Central Bank's marginal lending facility applicable on the due date of payment. The period of grace (Art.8(7), Annex Pos. F) shall be 1 month. The maximum amount of the damage sum (Art.8(7) (Annex Pos. D) shall amount to 25% of the value of the relevant part of the delivery item as determined in the contract. The Buyer shall be entitled to furnish proof of a smaller damage of the Seller.
7. Regarding Art.9: The Buyer shall inform the Seller of the safety devices the Buyer requires against hazards when using the delivery item. They shall be supplied with the delivery item at the expense of the Buyer if the parties have agreed on the type and scope of the safety devices to be supplied. Their absence beyond this delivery obligation shall not constitute a defect (Art.9(1)). Unless expressly agreed otherwise in the contract, the warranty period (Art.9(2), Annex Pos. G) shall be 12 months. The extension of the warranty period (Art.9(5), Annex Pos. H) shall be limited to 12 months. The daily operating time (Art.9(6), Annex Pos.) shall be 8 hours. In the event of a longer use, the warranty period shall be reduced accordingly. The new warranty period (Art.9(7), Annex Pos. G) shall be 0 months. The warranty period of the Seller shall also not apply to the products supplied by the Buyer (Art.9(14)). Unless otherwise agreed, all defect claims made by the Buyer shall expire after 12 months following the delivery of the delivery item (first sentence of Art.9(5)). Otherwise, clause 11 of this annex sheet shall apply accordingly (Art.9(16)).
8. Regarding Art. 11: Art. 11.1 deleted
9. Regarding Art.13: The contract shall be governed by German law (Art.13(2)).
10. Assembly: If the Seller assembles the delivery item, the special agreements concluded shall apply to this.
11. Exclusion of other claims made by the Buyer
 Further claims made by the Buyer, especially compensation for damage of any kind, including such damage not caused to the delivery item itself, shall be excluded - regardless of the legal basis of their assertion.
 This exclusion of liability shall not apply in case of intent, gross negligence on the part of the owner or executive employees, culpable injury to life, limb or health and culpable infringement of essential contractual obligations.
 In the event of a culpable infringement of essential contractual obligations, the Seller shall be liable - except in cases of intent and gross negligence on the part of the owner or executive employees - for the reasonably foreseeable damage typical for the contract only.
 Furthermore, this exclusion of liability shall not apply to cases in which there is a liability under the Product Liability Act for personal injury or damage to privately used items in case of defects to the delivery item. The exclusion of liability shall also not apply in case of damage caused by malicious fraud or despite special guarantee promises.