



1.0 General

- 1.1 The standard terms and conditions of sale and delivery set forth herein ("STC") shall apply exclusively for all our deliveries and services. They exclusively apply in relation to entrepreneurs, legal persons under public law and special funds under public law. Deviating, conflicting or supplementary standard terms and conditions of the purchaser do not form part of the contract, unless they are expressly accepted in writing.
- 1.2 Within the scope of continuing business relations, our STC shall apply to future deliveries and services, even if they are not expressly agreed upon in each individual case.
- 1.3 The term "claim for damages" used in the STC also includes claims for indemnification for useless expenditure.

2.0 Quotations

- 2.1 Our quotations are not binding and are to be understood merely as an invitation to place an order.
- 2.2 Unless expressly confirmed by us in writing as binding as an integral part of our offer, statements made in catalogues, brochures, flyers, advertisements, illustrations and price lists concerning dimensions, weights, services etc. are to be considered as only approximately definitive.
- 2.3 We reserve the right to make technical and constructive customary changes to the ordered goods which may deviate from the descriptions contained in offers or brochures as far as they neither unreasonably impair the purchaser nor affect the serviceability of the ordered goods.
- 2.4 Models, samples, drawings, plans, descriptions, quotations and other documents remain our property and are covered by our copyright. They may not be passed on or made available to third parties.

3.0 Coming into Effect of Contract

- 3.1 The purchaser shall be bound by his order for a period of 4 weeks from the date of dispatch of the order.
- 3.2 The contract shall come into effect only with the issuance of our written acknowledgement or the delivery of the goods and/or services, whichever is earlier.
- 3.3 Additional agreements, as well as telephonic or oral changes and supplements with respect to already acknowledged orders require our written confirmation to become effective. Unless otherwise agreed, the goods to be delivered shall not be exported.

4.0 Prices

- 4.1 Orders for which no prices have been agreed upon shall be invoiced using the list prices valid on the day of delivery.
- 4.2 Our prices shall be understood as for delivery ex works/warehouse. Packing, transport costs and costs for transport insurance as stipulated by the purchaser as well as installation and operation materials will be invoiced separately.
- 4.3 The sales tax valid on the day payment is due will be invoiced separately.

5.0 Payment, Payment Delay, Prohibition of Set-Off

- 5.1 Modes of payment other than by cash or bank transfer will only be accepted if agreed upon in advance, and even then only on account of performance.
- 5.2 Discounts or cash discounts may only be deducted when they have been agreed upon in writing. A cash discount may only be deducted when all payments associated with the contract have been received by us by the specified deadline. If no special agreement has been made, then payment is to be effected within 10 days after the invoice date with 2 % cash discount or within 30 days net without deductions. Payments for repairs are to be effected net without deductions within 14 days after date of invoice.
- 5.3 If the purchaser delays payment we shall be entitled to claim interest at the rate of 9 percentage points above the basic rate of interest according to § 247 of the German Civil Code ("BGB") as well as the lump sum according to § 288 BGB. Our claims for damages that are actually higher remain unaffected.
- 5.4 The purchaser may only set off those claims which are non-appealable or undisputed or have been recognized by us.
- 5.5 If the purchaser delays payment for more than a month or if enforcement procedures have been taken against him, we are entitled to make outstanding deliveries that arise from other orders or call orders only upon advance payment.
- 5.6 The purchaser is only entitled to a retention, if his counterclaim is based on the same contractual relationship.

6.0 Deadlines, Delivery Times, Delays in Delivery

- 6.1 Delivery times begin with the dispatching of the order acknowledgement, however not before the purchaser has provided the necessary documents, approvals or releases and not before any agreed down payment has been made.
- 6.2 Agreed delivery times shall be reasonably extended in case of labor disputes, in particular strikes and lockouts, as well as in cases of force majeure or unforeseen obstacles beyond our control, as far as such obstacles can be proven to have an influence on the production or delivery of the ordered goods. This also applies if sub-suppliers are affected by such circumstances. If our operations are influenced by the circumstances above in a way that we cannot reasonably be expected to carry out the order, we shall be entitled to rescind the contract.
- 6.3 In case of delays of delivery, the purchaser may as far as he demonstrates to have suffered a loss therefrom claim a compensation of 0.5 % for every completed week of delay, but in no case more than a total of 5 % of the net price of that part of the supplies which due to the delay could not be put to the intended use.
- 6.4 Both the purchaser's claims for damages due to delayed supplies as well as claims for damages in lieu of performance exceeding the limits specified in clause 6.3 are excluded in all cases of delayed supplies, even after a delivery deadline that was set for us has expired. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. The purchaser may only rescind the contract within the scope of statutory provisions as far as we are responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the purchaser.
- 6.5 At our request, the purchaser shall declare within a reasonable period of time whether he, due to the delayed delivery, rescinds the contract or insists on the delivery.

7.0 Shipment, Passing of Risk and Default of Acceptance

- 7.1 The choice of the shipping route, the type of carriage as well as of the carrying agent will be determined by us in our sole discretion, unless otherwise expressly agreed in writing. We assume no guarantee for the lowest shipping costs.
- 7.2 The risk will pass to the purchaser as soon as we hand over the ordered good to the forwarder or to another person specified to carry out the shipment, even if we assumed the later installation of the equipment at the purchaser's premises. If shipment is delayed due to circumstances for which the purchaser is responsible, then the risk shall pass to the purchaser on the day on which the purchaser was given notification of readiness of shipment.
- 7.3 The purchaser must compensate for all costs and damages resulting from default of acceptance. Irrespective of higher damages we may charge storage costs of at least 0.5 % of the net value of the stored goods for every month commenced, but in no case more than a total of 5 %. The purchaser may prove that the actual damage is lower.
- In case of default of acceptance as well as in other cases in which we are prompted by the purchaser's behavior to store the ordered goods, our respective claim is due 14 days after occurrence of default.

8.0 Guarantee and Period of Limitation

- 8.1 We guarantee the equipment to be free of constructive or material defects in accordance with the respective state of the art as well as with the technical standards valid in the Federal Republic of Germany. We do not guarantee compliance with any foreign standards (including those of other EU states) unless this has been expressly agreed upon in writing for each individual case.
- 8.2 We do not issue guarantees ("Garantien") in the legal sense. References to technical standards (e.g. DIN) or to other recognized technical rules are meant to describe the goods only and do not constitute a guarantee.
- 8.3 Claims for repair or replacement are subject to a period of limitation of 12 months calculated from the start of the statutory period of limitation; the same shall apply mutatis mutandis in the case of rescission and reduction. This period shall not apply where longer periods are prescribed by law according to §§ 438 para. 1 no. 1 lit. a (right in rem), no. 2 (buildings and things for buildings), 479 para. 1 (right of recourse) and 634a para. 1 no. 2 (defects of a building) BGB, in the case of intent, gross negligence, fraudulent concealment of the defect or non-compliance with guaranteed characteristics ("Beschaffenheitsgarantie"). The statutory provisions regarding suspension of the period of limitation ("Ablaufhemmung", "Hemmung") and commencement of limitation periods shall be unaffected.

9.0 Notification of Defects

- 9.1 The purchaser is required to inspect the delivered goods directly after receipt and notify us of any apparent defects within 10 days. Non-apparent defects must be notified immediately after their discovery. Failure to give timely written notification of defects will result in the goods being regarded as accepted. The purchaser bears the burden of proof for all prerequisites of the claim, in particular the defect itself, for the point of time the defect was discovered and for the timeliness of the notification.

10.0 Rights Associated with the Guarantee

- 10.1 The purchaser is not entitled to refuse deliveries due to immaterial defects.
- 10.2 In case of defects we are entitled and obliged, at our option, to repair the defect or to deliver a good that is free of defects within a reasonable period of time ("supplementary performance"). We may refuse supplementary performance, as long as the purchaser does not fulfill his payment obligations to an extent which corresponds to the part of the performance that is free of defects.
- 10.3 If a repair is impossible, attempts of repair have been unsuccessful twice, or the repair or new delivery has not been carried out or only with culpable delay, the purchaser can, at his option, demand the statutory reduction in price or rescind the contract. In case of immaterial defects rescission is not permitted.
- 10.4 The purchaser's right of recourse against us pursuant to § 478 BGB only applies insofar as the purchaser has not concluded an agreement with his customers exceeding the scope of statutory provisions governing claims based on defects.
- 10.5 If we provide services in searching or repairing defects without being obliged to do so, we are entitled to charge remuneration pursuant to our respective current price list. In particular, this applies, if a notified defect may not be proved or is not attributable to us, unless the purchaser proves that he has not recognized the absence of a defect and that he is not responsible for that.



- 10.6 The purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject-matter of the supplies has subsequently been brought to another location than the purchaser's branch office, unless doing so complies with the normal use of the supplies.
- 11.0 Liability**
- 11.1 Unless otherwise provided for in these STC, the purchaser's claims for damages are excluded irrespective of their legal grounds, in particular on account of breach of obligations resulting from the contractual relationship and from tort.
- 11.2 Exclusions and limitations of liability do not apply
- in case of intent and gross negligence;
 - as far as we have assumed a guarantee;
 - in case of breach of an essential obligation which jeopardizes the achievement of the purpose of the contract and the fulfillment of which the purchaser may therefore regularly rely on ("Kardinalpflicht"); insofar we are only liable for the typical and foreseeable damage.
- 11.3 Liability for injury to life, limb or health as well as liability based on the German Product Liability Act ("Produkthaftungsgesetz") and from recourse against the manufacturer remains unaffected by the provisions above.
- 11.4 We do not assume any liability for damages resulting from the following: inappropriate or improper usage, faulty installation by the purchaser or a third party, natural wear and tear, incorrect or careless handling, use of inappropriate equipment, faulty construction works, chemical, electrochemical or electrical influences, improper alterations or repairs by the purchaser or a third party without our consent.
- 11.5 As far as our liability is excluded or limited, this shall also apply to the personal liability of our employees, representatives and vicarious agents.
- 12.0 Retention of Title**
- 12.1 The delivered goods shall remain our property until such time as all claims resulting from the business relationship between ourselves and the purchaser have been fully settled. Neither the adjustment of claims via a current invoice nor the effecting of payments and their acceptance will have any effect on the proprietary rights.
- 12.2 The purchaser is entitled to re-sell goods under lien in the ordinary course of business, but he is not allowed to mortgage the goods or to transfer them by way of security. If the purchaser mortgages or transfers the expectant rights ("Anwartschaftsrecht") as a security, he is obliged to inform the receiver of the security that the goods are still our property and to inform us immediately of the mortgaging or offering of the goods as security. In re-selling the goods under lien on credit, the purchaser is further obliged to secure our rights and in particular to pass on the lien on the proprietary rights.
- 12.3 Rights resulting from any claim made by the purchaser in connection with the re-sale of any goods under lien are considered as already assigned to us up to the amount of the agreed purchase price. We hereby accept this assignment. If an assignment of claims is not possible due to the terms of the re-sale agreement, then the purchaser will only be entitled to re-sell goods under lien if we have given our express consent in writing. This also applies if the claim from the re-sale is to be set against a current invoice. Irrespective of whether or not in this case the re-sale is effected illegally or with our consent, the purchaser's rights to receive payment are considered as already assigned to us up to the extent of the invoiced amount.
- 12.4 Notwithstanding the assignment and our collection rights, the purchaser is entitled to recover payments for as long as he is able to fulfil his obligations towards us and does not become insolvent. In the case of a grave deterioration of the purchaser's financial situation in particular the filing of a petition in insolvency the collection right will become null and void. At our request the purchaser has to hand us over a notice of assignment duly signed by himself at any time even if he himself is entitled to collect payments.
- 12.5 Any finishing or processing of the goods under lien is carried out by the purchaser for us, but will not result in our assuming any obligations. In the case of treatment, connection, mixing or combining of the goods under lien with other materials not belonging to us we shall retain partial ownership rights in the new product created thereby in the proportion of the invoiced value of the goods under lien to the value of the other goods used at the time the treatment, connection, mixing or combining took place.
In the case that the purchaser obtains sole ownership of the new product, the parties hereby agree that the purchaser grants us partial ownership of the new product in the proportion of the invoiced value of the treated, connected, mixed or combined goods under lien to the value of the new finished product. Furthermore, it is also agreed already that the purchaser will store the new product for us without charge.
If the goods under lien are immediately re-sold together with other goods, be it with or without treatment, connection, mixing or combining, then the advance assignment agreed upon above will be valid only up to the invoiced value of the goods under lien which are re-sold together with the other goods.
- 12.6 The purchaser is obliged to insure goods delivered under lien against fire and water damage until such time as he has obtained full ownership, and on demand to demonstrate that he has indeed done so.
- 12.7 We are obliged to release collaterals if and when the sum of the collaterals provided by the purchaser exceeds the total value of claims resulting from the business relationship by at least 10 % and if requested to do so by the purchaser.
- 13.0 Conditional Performance**
- 13.1 The performance of the contract is subject to the condition that no hindrance attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.
- 13.2 The purchaser shall provide any information and documents required for export, transport and import purposes.
- 14.0 Impossibility of Performance, Adaptation of Contract**
- 14.1 To the extent that delivery is impossible, the purchaser is entitled to claim damages, unless we are not responsible for the impossibility. The purchaser's claim for damages is, however, limited to an amount of 10 % of the value of the part of the supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the purchaser. The purchaser's right to rescind the contract shall be unaffected.
- 15.0 Installation and Erection**
- 15.1 The purchaser is obliged to assume the costs of all earth, concrete, building, electrical, scaffolding, stucco, painting and other supporting works not normally within the scope of our services and all necessary building materials, and to ensure the timely availability of the same.
- 15.2 The purchaser is obliged to take all necessary measures for the protection of our property and our installation personnel on the construction site.
- 15.3 Prior to the start of the installation works the purchaser is obliged to provide all necessary information relating to the location of concealed power, gas or water lines or similar facilities.
- 15.4 If the erection, installation or commissioning is delayed through circumstances beyond our control then the purchaser will be liable for all the costs associated with the waiting period and further travel necessary for the erection or installation personnel.
- 15.5 We shall be liable only for the proper handling and erection or installation of the delivered goods. We are not responsible for the work performed by the installers or of our erection and other auxiliary personnel as long as their work is not directly associated with the delivery and erection of our goods and was assigned by the purchaser.
- 15.6 The purchaser will compensate us for the costs of labor, travel and travel-related expenses including surcharges for overtime, night work and work on Sundays and holidays in accordance with the agreements made on signing the contract. The purchaser shall promptly and weekly confirm to us the working times of the installation personnel as well as the finalization of the erection, installation or commissioning.
- 15.7 Apart from that we refer to our special terms for erection and installation.
- 16.0 Repairs**
- 16.1 In the case of free deliveries we carry out repair work on equipment and parts delivered by us. Usually we deliver completely refurbished replacement equipment instead of the equipment delivered to us for repair. The replacement equipment is delivered within a short time. Especially for large pieces of equipment, the repair costs for the equipment delivered to us or a standard replacement price is invoiced. The equipment to be repaired becomes our property as soon as the appropriate replacement equipment has been shipped. Ownership in the replacement equipment will only be transferred after full payment of the respective repair invoice. In case of a special agreement before delivery of the equipment that is to be repaired and at the latest with the placing of a repair order, the owner of equipment to be repaired can retrieve his own equipment; in this case the individual repair costs will be invoiced and the time required for the repair can be several weeks. Rental equipment will only be provided on request and against payment of a rental fee including inspection costs. Transport costs and transport risk shall always be borne by the purchaser.
- 17.0 Jurisdiction, Choice of Law**
- 17.1 If the purchaser is a merchant, legal person under public law or special fund under public law, Essen is the sole venue for all disputes arising from or in relation to the contractual relation. Alternatively, we are entitled to file a lawsuit at the purchaser's principal place of business.
- 17.2 The contract including its interpretation shall be governed by German law; the UN Convention on the International Sale of Goods shall be excluded.

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