

General terms and conditions of delivery and payment

Status September 01, 2018

I. SCOPE

These general terms and conditions apply to all our current and future legal relationships with our customers.

Customer's general terms and conditions shall not apply to any of our legal relationships with our customers.

Customer accepts these general terms and conditions as legally binding at the latest when delivery of our goods and/or services is/are accepted by the customer without objections.

II. GENERAL PROVISIONS

- Our offers are subject to change without notice. Unless otherwise agreed, the content of our quotation/s is not binding.
- All agreements between the customer and us as well as all our warrants or confirmations to our customers require the written form to be valid.
- In case individual provisions of these general terms and conditions or of any contract should turn out to be invalid either in part or in their entirety, all remaining provisions shall be unaffected. In such a case, our company and the customer shall jointly replace each existing void provision with a new valid provision, which as closely as possible corresponds to the intended economic purpose of the original provision. This entire Salvatory clause also applies to possible gaps in any agreement.
- The customer shall not assign claims based on contractual agreements with us without our prior written approval.
- The customer has the right to retain or offset only in case his/her counterclaim is uncontested or established as a legally valid claim.
- The standard for the interpretation of all delivery and trade clauses are the INCOTERMS being valid on conclusion of business.
- Unless otherwise stipulated, the parties enter into a contractual relationship at the time we confirm a customer's order in writing.
- Irrespective of the legal basis, all customer claims become time-barred after twelve (12) months at the latest, unless a different limitation period has been stipulated in an individual case. The legal limitation periods apply to all cases of willful, malicious or fraudulent acts and as prescribed by law. In particular, the legal limitation periods apply to claims based on the German Product Liability Act (Produkthaftungsgesetz).

III. PRICES

- Unless otherwise agreed, our prices are quoted ex works and without packaging, freight, insurance or applicable VAT. We reserve the right to call on the customer to pay in advance for freight and other expenditures or costs.
- Unless otherwise agreed, our valid prices are the prices at the time the goods are delivered or at the time a service is first delivered. Quoted prices are binding for the stated commitment period.
- Unless we have agreed to deliver freight and duties paid, we set our price on the assumption that we will not pay for the taxes, duties or similar costs and fees levied in destination or transit countries. Unless otherwise agreed, we reserve the right to increase our prices in case we incur taxes, duties or similar fees or costs in the destination country or additional or higher fees (especially duties or taxes) are levied after we have entered into the respective agreement with the customer.
- The customer shall bear all unforeseen expenditures in the context with the contract fulfillment in case customer is responsible for incurring these expenditures (e.g. in cases of late payment, lack of cooperation regarding the contract fulfillment, increased freight charges due to different transport conditions, etc.).

IV. PAYMENT TERMS

- Unless otherwise agreed, payment shall be made by bank transfer; it is due without discount and free of costs for us.
- Unless otherwise agreed, payment of the contractually agreed amount shall be made as follows: 50 % due immediately upon receipt of our order confirmation or signing a contract, 40 % due immediately upon notification of our readiness for delivery/service and 10 % due within 30 days of the final invoice date.
- We shall deliver the merchandise only upon receipt of the respective payment or upon receiving the respective payment security from the customer equivalent to 90% of the order value at least.
- Unless otherwise agreed, invoices for accessories and replacement parts are due within 30 days net after the invoice date.
- In case the customer does not pay until the due date, we reserve the right to charge interest at the statutory rate and further reserve the rights to claim damages and withdraw from the execution of the individual order.
- Customer declares its credit worthiness upon order submission. After entering into a contractual agreement with the customer we may become aware of circumstances, which by our equitable discretion diminish the credit worthiness of the customer. In such a case, we reserve the right to deliver receivables or services in fulfillment of any one or all contractual agreements only against prepayment or against cash collateral, in particular against bank guarantee. In case the customer does not satisfy our request for prepayment or payment security within an appropriate period, we reserve the right to contract out of the agreement or part of the agreement and claim damages for nonperformance.

V. DELIVERY OF GOODS AND SERVICES

- Our written order confirmation is binding for the delivery scope of our goods and/or services. In case we have offered goods and/or services by way of a binding quotation and the customer accepts this quotation in due time, the content of our quotation is binding.
- Fulfilling our delivery and performance obligations is contingent on the condition that our suppliers deliver according to their contractual obligations, unless we are responsible for our supplier's non-performance of contract.
- The technical data conform to DIN standards or our material data sheets, respectively. In case DIN standards or material data sheets do not exist, the respective EU standards apply. In the absence of all aforementioned standards, the usual commercial trade practices prevail. The simple reference to technical standards, material data sheets or inspection certificates does not constitute an assurance of characteristic properties.
- Software Use
In case the delivery scope includes software, the customer shall be granted the non-exclusive right to use the software including the documentation. The customer's license to use the software extends only to the use with the delivered hardware. The software shall not be installed or run on more than one system.
The customer shall copy, modify or translate the software or convert the object code to source code only to the extent permitted by law and only with our prior explicit approval in writing. Furthermore, the customer shall not remove or modify manufacturing information and in particular copyright information without our prior explicit approval in writing. The software distributor or the software supplier, respectively, retains all other rights to the software and its documentation including copies. The customer shall not license the software to third parties.

VI. DELIVERY AND PERFORMANCE PERIODS

- The agreed delivery and/or performance periods commence with us receiving the customer's down-payment or alternatively with the date of the order confirmation, in case we did not demand a down-payment. These periods are contingent on the timely clarification of all contractual details and on the customer fulfilling all its contractual obligations in time, such as furnishing documents,

- releases, materials, official certificates and permits, collaterals and satisfying payment obligations, etc. In case the customer causes a delay in the contractual performance, we will establish new delivery and/or performance periods and inform the customer thereof.
- Dispatching the merchandise ex works shall establish the date of performance for the delivery. In case goods are not dispatched in due time due to circumstances beyond our control, then our notification of our readiness to deliver shall satisfy our delivery obligation.
- We reserve the right to charge for incurred additional expenses, in case the customer desires a later than agreed delivery date or through customers fault causes a delay in delivery.
- When the parties have agreed on a binding period for the performance of services (e.g. repairs, installations or an equipment launch) the following applies: In case the performance of the service is delayed due to circumstances beyond our control, then an appropriate extension of the delivery period is set. An extension is set even if such events and circumstances occur after we have already fallen behind with the delivery of our service. In case the customer is responsible for the delay, it shall bear all costs resulting from the delay.
- The performance period for the delivery of goods or services is extended appropriately when the customer asks for changes or in case of force majeure.
- Partial deliveries of goods and services are permitted.
- In case we are in delivery default and the delay is not the result of a force majeure event and we are exclusively responsible for this delay, the customer shall have the right to claim Liquidated Damages for proven damages due to our culpable delay. This compensation is 0.5 % for each full week of our culpable delay but no more than a total of 5 % of the delayed part of the scope of supply, which the customer cannot use at all or not use as stipulated as the result of our delayed delivery. The customer shall claim Liquidated Damages for a delivery delay only if the late delivery delays for more than 4 weeks. All other claims due to delivery delay are excluded.
- We reserve the right to take back the delivery item, in case we do not meet our performance obligation as stipulated in an individual contract.

VII. DISPATCH, TRANSFER OF RISK OR LOSS, ACCEPTANCE, PACKAGING

- Unless otherwise agreed, we determine the way merchandise is routed, the means of transport, the freight forwarder and the carrier. Upon request of the customer, we will insure the shipment at the customer's expense against insurable risks.
- Unless otherwise agreed, the customer shall assume the risk of loss or deterioration of items upon the date of delivery of the deliverable items, including items used for the assembly and/or installation of equipment. This applies notwithstanding whether or not we bear other expenditures or perform other services, such as the shipping costs, delivery, installation, startup, etc. In case the dispatch of deliverable items is delayed due to circumstances beyond our control, the customer shall assume the risk of loss or deterioration upon our notification of our readiness to deliver or our notification of our readiness for inspection and/or acceptance.
- The agreed warranty provisions notwithstanding, the customer shall accept delivered items even if they show defects.
- Whenever this is customary in the trade, we package shipped items. The customer shall bear the costs of packaging, protective measures and/or transport equipment.

VIII. RESPONSIBILITY, FUNCTION TEST, ACCEPTANCE, STARTUP

- At the time the customer orders manufacturing equipment according to its specifications, the customer assumes responsibility for the following parameters: size, material, specified modifications of the item, the operating conditions at the site of installation in the customer's production facility, utilities (energy source, water, etc.), compressed air and similar utilities.
- At the time we provide/deliver/install/assemble a machine/equipment/equipment parts, we perform a function test either on our or the customer's premises. The function test demonstrates whether the provided/delivered/assembled/installed machine/ equipment/ equipment parts function properly and comply with the agreed performance specifications.
- Following the successful function test, we compile an acceptance protocol and release the machine/equipment/equipment parts for use by the customer.
- The machine/equipment/equipment parts shall be considered accepted when the customer starts using the delivered item but at the latest, 60 days after the item was delivered, unless the customer refuses the delivery in writing based on serious defects and immediately quits using the machine/equipment/equipment parts.

IX. CUSTOMER COOPERATION

- The customer shall support us to the best of its abilities in the manufacturing of the ordered machine/equipment/equipment parts. In particular, the customer shall provide us with useful specifications. Furthermore, the customer shall also provide us with a sufficient amount of the same material, which the newly designed and constructed machine/equipment/equipment parts will manufacture or process. We use the provided materials to establish benchmarks for our compliance with the agreed performance parameters. In case the customer significantly modifies the materials during the design and construction of the machine/equipment/equipment parts and thereby significantly adds to the effort of designing/constructing the machine/equipment/equipment parts, the following applies:
 - Providing we accept the modification, the delivery and/or performance periods shall be extended.
 - Providing we reject the modification request, we shall continue manufacturing the machine/equipment/equipment parts according to the original design, unless the customer terminates the agreement. In case the customer terminates the agreement, we are entitled to claim the agreed payment minus the saved expenditures. The customer is entitled to terminate the agreement only after our payment claim is sufficiently secured or satisfied.
- The customer shall support our technical personnel in the course of performing contractual work on its premises to the best of its ability and at its expense. The customer shall further provide safe working conditions for our technicians and assure the compliance with existing safety regulations and adequate work conditions. Furthermore, the customer shall inform us of existing special safety regulations and immediately report to us any incident of non-compliance with such special safety regulations by our technical personnel.
- With its collaboration and technical assistance the customer shall assure that our technical personnel are able to start performing the contractual work immediately upon arrival and do not encounter work delays. The customer shall provide and connect all needed utilities (power, water, etc.)
- In case the customer does not fulfill its obligation to collaborate with us, we are entitled but not obliged to first advise the customer of its duty to perform the collaborative tasks and after an appropriate grace period, have these tasks executed at the customer's expense.

X. WARRANTY

- To the exclusion of all further claims, we provide the following warranty regarding defects of the delivered goods and/or services:
- We shall at our discretion repair or replace free of charge all parts, which are proven to have been defective before the transfer of risk. The customer shall inform us in writing of any defect immediately upon discovery. Replaced parts become our property.
 - As the result of an amicable arrangement, the customer shall grant us sufficient time and opportunity to perform all the repairs and replacements, which we deem necessary. Failure to provide this time and opportunity to remedy the defect shall release us from any liability for resulting damages. In emergency situations, to prevent hazardous operating conditions or to avert disproportionately large damages, the customer shall immediately advise us of this situation. Only under the aforementioned conditions has the customer the right to remedy the defect either himself or with the help of a third party and claim compensation from us for the necessary expenditures.

3. To the extent that the complaint turns out to be valid, we shall bear the costs of the replacement part, including shipping and equitable cost for the removal of the defective part and the installation of the replacement part plus the costs of dispatching our technicians and assistants to remedy the defect if such action can be reasonable claimed in an individual case.
4. In particular, we do not offer any warranty under the following conditions:
Improper or incorrect use, faulty installation or startup by the customer or third parties, natural wear and tear, improper or negligent handling, improper maintenance, use of unsuitable operating or maintenance materials, unsuitable construction site and environment and chemical, electrochemical or electrical effects.
5. We do not assume any liability for damages resulting from improper equipment repairs, which are done by the customer or third parties. The same applies to modifications to the delivered item without our prior approval.
6. **Warranty Period:**
a) The warranty period begins with the successful function test and startup after the construction/delivery/installation of the machine/equipment/equipment parts or with the start of the commercial production, whatever comes first and covers a period of 12 months. In case the installation and start up cannot be carried out due to reasons beyond our control the warranty period shall terminate not later than 15 month after the function test at our premises.
b) We offer a warranty of 12 months from the date of delivery for accessories and/or replacement parts.
The abovementioned warranty rights of the customer are exhaustive. Customer claims for further damages are excluded.

XI. LIABILITY

1. We do not assume liability for indirect and/or consequential damages.
2. Our liability shall be limited to direct damages and a total value of no more than 10% of the respective order value. However, this limit does not apply if our insurance covers an amount in excess of the above stated limit.
3. We do not assume any liability for the deliveries and/or services of third parties.
4. This limitation on our liability does not apply
- in cases of tortious actions on our part,
- in cases of gross negligence on the part of the owner / legal representatives or executive employee of our company,
- in case we maliciously fail to disclose defects or in case of defects, which we had guaranteed to be absent.
- in case of culpable nonperformance of significant contractual obligations. In such cases, we also assume liability for gross negligence on the part of lower level employees and simple negligence. In the latter case of simple negligence, our liability shall be limited to reasonable and foreseeable damages, which are typical for this type of agreement.
5. Also excluded from limitations on our liability are damages resulting from us culpably inflicting injury to health, life and limb of persons. The liability limitations also do not apply to damages resulting from defective delivery items to the extent that we are liable according to the German Product Liability Act (Produkthaftungsgesetz) for injury to persons or damage to personal property.

XII. RESERVATION OF PROPRIETARY RIGHTS

1. Delivered items remain our property until the customer has fully satisfied all our claims resulting from the respective supply relationship.
2. We reserve the right to insure the delivery item against theft, breakage, fire and other damages at the customer's expense, provided the customer has not demonstrated that customer maintains such insurance coverage.
3. In case the customer processes the delivery item, connects it to other equipment or commingles the delivery item with other equipment while this delivery item is still subject to our reservation of proprietary rights, we acquire partial title to the new arrangement involving the delivery item. The portion of the acquired title shall equal the ratio of the invoice value of the delivery item still under reservation of property rights to the invoice value(s) of the other co-assembled item(s). In case our property ceases to exist as the result of the connection or commingling with other equipment, then the customer shall now already transfer to us a portion of his title to the newly arranged equipment or item and keeps our proprietary rights intact free of charge. Our portion of the title shall equal the invoice value of the item we delivered under reservation of proprietary rights. Our joint proprietary rights shall be considered retained goods in the legal sense of paragraph 1.
4. The customer shall sell the items, which are subject to our reservation of proprietary rights, only to the usual business terms and as part of ordinary business transactions and only to the extent that the customer satisfies all payment obligations on time. The customer shall not otherwise dispose of our retained delivery items. Receivables from the sale of our retained delivery items shall be relinquished to us at the time our customer enters into a sales contract concerning our retained item(s). Such receivables shall secure our interest to the same extent and in lieu of our delivery items, which are still subject to reservation of proprietary rights.
5. The customer shall have the right to collect receivables from the sale of our retained delivery items. Upon our request, our customer shall inform his customer of the assignment and provide us with the necessary information and documents for the payment collection. Under no circumstances, shall our customer engage in further assignments of receivables.
6. The customer shall inform us without delay in the event that a third party levies an execution against our retained delivery items or their value is otherwise diminished.
7. In case the existing collateral exceeds our secured receivables by a total of more than 20 % and upon our customer's request, we shall release collateral of our choice.
8. We reserve the right to take back items, which are subject to reservation of our proprietary rights, in case the customer violates the terms of the agreement, in particular, if the customer is in default of payment. In such a case, the customer shall relinquish our retained delivery items to us. In case of doubt, reclaiming the items delivered under reservation of proprietary rights shall not be considered a cancellation of the agreement.

XIII. CONFIDENTIALITY

1. When we submit a quote or in the course of performing our contractual obligations we submit to the customer documents, which may include figures, plans, sketches, drawings, descriptions, weight and performance parameters, measurements, calculations, evaluations etc., some of them in electronic form. The aforementioned documents shall remain our property. They shall be held in strictest confidence and shall not be made accessible to third parties. This applies not to
a) information, which the customer has known beforehand when this information was not subject to this confidentiality obligation, or
b) information, which was prior public knowledge or was published later, or
c) information, which the customer has independently developed on its own, or
d) information disclosed by order of a court of law or another authority or
e) information, which needs to be disclosed to ensure the fulfillment of the agreement
Paragraph 1 shall also apply to documents marked as confidential and provided by the customer.
2. The customer shall use the documents provided by us for no other purpose than the purpose stipulated in the agreement. The use of the entire set of documents or individual documents for any other purposes requires our prior explicit approval in writing. This applies in particular for the use of such documents for the reverse engineering of machines/machine parts/equipment/tools/equipment parts/accessories. The customer shall be liable for each incident of fraudulent or unlawful use and assumes liability also for its employees, associates, contractors and customers.

XIV. FORCE MAJEURE

1. Should one of the parties of the agreement be prevented from performing its contractual obligations due to events beyond its control or due to a force majeure event, such as but not limited to war, a large fire, flooding, storms (Tornadoes, Hurricanes, Typhoons) and earthquakes, strikes, walk-outs and lock-outs or export restrictions, then all agreed time limits shall be extended by a period equivalent to the effect of the force majeure event plus an appropriate time to restart the operations.
2. The affected party shall inform the counterparty in writing and within 14 days of the onset of the force majeure event. The affected contract partner shall also submit to the other party a certificate confirming the force majeure event issued by the appropriate authority. The affected contractual partner shall also provide the other partner with information on the reasons for the force majeure event and its effects.
3. As soon as possible, the affected contract partner shall also inform the other partner in writing of the end or the correction/solution of the force majeure event.

4. In the event that a force majeure event lasts longer than six (6) months, both contract partners shall have the right to terminate the part of the agreement, which is affected by the force majeure event.
5. In case of a force majeure event, the seller and customer shall amicably agree on further actions and clarify the financial ramifications.

XV. SAFETY

1. To avoid misunderstandings, we explicitly state that the removal of delivered or configured safety devices is strictly prohibited. We shall not be liable for damages due to the modification or removal of safety devices incurred by the customer, the customer's contractors, employees and representatives or third parties. The removal of safety devices shall be considered a willful violation of the agreement.
2. We assume liability or similar obligations with regard to equipment that is not part of our contractual delivery scope only if the parties to the agreement have stipulated this in writing in the agreement.
3. All contractual deliveries comply with the valid laws, regulations, standards and the respective safety regulations of the Federal Republic of Germany. Possibly applicable additional or different regulations, safety regulations and safety measures are part of the customer's scope of delivery to us; they are the responsibility of the customer.
4. The customer is provided with documentation in the English language (in the respective national language in the EU countries). In the event that an employee of the customer does not have sufficient knowledge of the respective language, it is the customer obligation to have the documentation translated into a familiar language for this employee. This also applies to third parties who work for the customer.

XVI. INDUSTRIAL PROPERTY RIGHTS

The customer declares that neither the machines/equipment/equipment parts nor parts of the machines/equipment/equipment parts, which he designed either by himself or with our assistance, or the items produced with this equipment infringe on the industrial property rights of third parties. In case any of the abovementioned equipment or products nevertheless does infringe on industrial property rights, the customer shall upon first request indemnify us and hold us harmless from all third party claims for property right infringement brought against us. The customer shall immediately inform us when a third party claims that our delivered items or software infringe on existing property rights.

XVII. TERMINATION AND SUSPENSION OF THE AGREEMENT

In the event that one of the contractual parties seriously and/or on a sustained basis violates one or several provisions of the agreement, the counterparty shall have the right to terminate the agreement.

Serious grounds are in particular nonpayment, the initiation of insolvency proceedings or the filing of an insolvency application (or similar proceedings) against the counterparty. Alternatively, the contractual party who has the right to terminate the agreement may decide to suspend the agreement for a certain period. The party who has caused the suspension bears all consequences of any and all delays due to the suspension and also bears all incurred additional costs.

A termination of this agreement based on other grounds is excluded.

XVIII. EXPORT CONTROL

To the best of our knowledge, exporting the machine/equipment/equipment parts to the country named in the agreement and the use of the deliverable items in this country for the stated purpose does not violate the current German and/or EU export regulations. Our obligation to fulfill an agreement is subject to the provision that the fulfillment is not prevented by any impediments arising out of applicable national and/or international foreign trade and customs requirements, embargoes or other sanctions.

XIX. TAXES

The seller bears all government-levied taxes and fees up to the time of the cost and risk transfer from the seller to the customer as stipulated in the agreed delivery terms. The customer bears all other applicable taxes and fees, which are levied by the authorities or the government in the country of the customer.

XX. PLACE OF PERFORMANCE, APPLICABLE LAW, ARBITRATION CLAUSE

1. Unless otherwise stipulated, our registered office is the place of performance for our delivery obligation.
2. Swiss law excluding its conflict of laws principles applies to all rights and obligations in the context with our relationship to the customer.
3. The application of the UN Convention on Contracts for the International Sale of Goods (United Nation CISG) is explicitly excluded.
4. In the event of a dispute, the project managers of both contracting parties shall try to settle the dispute amicably. Should this fail, one party shall request a discussion between the executive managers of both contracting parties. In case this discussion also fails to settle the dispute, the affected party is entitled to initiate arbitration proceedings as prescribed by the Rules of Arbitration of the International Chamber of Commerce (ICC). The place of arbitration shall be Zurich. The arbitration proceedings shall be held in the English language. Only one (1) arbitrator is appointed if the amount in dispute is less than EUR 250,000. Three (3) arbitrators are appointed to settle disputes involving a dispute value of EUR 250,000 or more. All arbitrators must be fluent in the English language.

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