



# General Terms and Conditions of Delivery

## I. General provisions

1. The scope of deliveries ("deliveries") shall be governed by the mutual written agreements. Any general terms and conditions of business of the customer shall, however, only apply to the extent that the supplier of the product or provider of the service ("supplier") has expressly accepted them in writing.
2. The supplier reserves all rights of title and copyright, without restriction, to cost estimates, drawings and other documentation ("documentation"). The documentation may only be made available to third parties with the prior written consent of the supplier. In the event that the contract is not awarded to the supplier, the documentation must be returned unsolicited. Sentences 1 and 2 apply mutatis mutandis for the customer's documentation; it shall, however, be permissible to make this documentation available to third parties whom the supplier has permissibly commissioned to perform deliveries. The names, brands and trademarks of the supplier may only be used vis-à-vis third parties with the express permission of the supplier.
3. The customer shall be granted the non-exclusive right to use the standard software with the agreed features; the customer is not authorised to modify the same. The customer may only make a backup copy with the express permission of the supplier. Any provision of the software or a copy of the same is forbidden. Equally, it may not be used if machinery or plant components are not supplied by the manufacturer.
4. Partial deliveries are permissible to the extent that is deemed reasonable for the customer.

## II. Prices and terms of payment

1. Prices are stated ex factory and are exclusive of packaging and VAT at the relevant statutory rate.
2. In the event that the supplier assumes responsibility for installation or assembly and unless otherwise agreed, the customer shall be responsible for all associated ancillary costs, such as travel and hotel expenses, the cost of transporting tools and personal luggage, and all per diems, in addition to the agreed remuneration.
3. Payments shall be effected without any deductions and free of charge to the supplier's designated account(s).
4. Customers shall only be entitled to offset such claims as are undisputed or have been legally established. Claims shall also be deemed to be undisputed if they have been expressly acknowledged by the supplier in writing.

## III. Reservation of title

1. The delivered consignments (reserved goods) shall remain the property of the supplier until such time as all claims owed to the supplier by the customer in connection with the



## General Terms and Conditions of Delivery

business relationship have been satisfied. If and to the extent that the value of all security rights to which the supplier is entitled exceeds the amount of all secured claims by more than 20%, the supplier shall release a corresponding portion of the security rights at the customer's request.

2. As long as the deliveries are subject to reservation of title, the customer shall not be permitted to assign or transfer them by way of security; by the same token, resellers shall only be permitted to sell them in the course of normal business and on condition that the reseller shall receive advance payment from its customer or shall make the resale subject to title to the merchandise not passing to the customer until the latter has satisfied its payment obligations in full.
3. The customer shall notify the supplier immediately in the event of any garnishment, confiscations or other disposals or interventions by third parties.
4. In the event that the customer is in breach of its obligations, and especially in the event of default, the supplier shall be entitled, after setting a deadline that has expired in vain, to withdraw from the contract and to demand the return of the deliveries. The aforementioned is without prejudice to any legal provisions governing the conditions for waiving the specification of such deadlines. The customer is under obligation to return the merchandise.

### IV. Delivery periods; delays

1. Adherence to delivery periods shall be conditional both upon the punctual receipt of all documentation, necessary permits, releases and, especially, plans to be provided by the customer, and upon the customer's compliance with the agreed terms of payment and fulfilment of all other obligations. In the event that these conditions are not met in time, the delivery periods shall be extended accordingly; this shall not apply if the reason for the delay lies with the supplier.
2. The delivery periods shall be extended by a reasonable amount if force majeure, e.g. mobilisation, war, unrest or similar events, such as strikes or lock-outs, renders punctual delivery impossible.
3. The customer shall not be entitled to assert claims for compensation on grounds of late delivery nor to claim compensation instead of performance in an amount that exceeds the amount of the delivery, even after expiry of any deadline that the customer might set the supplier for delivery. This shall not apply where statutory liability governs cases of intent, gross negligence, or injury to life, limb or health. Within the scope of statutory provisions, the customer shall only be entitled to withdraw from the contract if the supplier is to blame for the delay. These aforementioned provisions do not constitute a reversal of the burden of proof to the disadvantage of the customer.
4. The customer shall be obliged to declare whether he intends to withdraw from the contract as a result of the delay or to insist on delivery, if the supplier requests such information; such declaration must be submitted within a reasonable period.



## General Terms and Conditions of Delivery

5. In the event that the customer requests the postponement of shipment or delivery by more than one month following the notification of readiness for despatch, the supplier shall be entitled to charge a storage fee of 0.5% of the price of the goods that form the subject of delivery for each month or part thereof of storage, but not more than 5% in total. The aforementioned provision is without prejudice to the rights of the contract parties to prove that the storage costs are higher or lower.

### V. Transfer of risk

1. Risk is transferred to the customer as follows, even when merchandise is shipped carriage paid:
  - a) in the case of deliveries without installation or assembly: when they are shipped or collected. The supplier shall insure the deliveries against the usual transportation costs at the request and expense of the customer.
  - b) in the case of deliveries with installation or assembly: on the day the customer accepts delivery on his own premises or following successful test operation, if so agreed.
2. Risk shall be transferred to the customer if the despatch, delivery, commencement or execution of the installation or assembly works on the customer's premises or test operation is delayed for reasons for which the customer is answerable or if the customer delays acceptance for any other reasons.

### VI. Installation and assembly

Unless otherwise agreed in writing, the following provisions shall apply with regard to installation and assembly:

1. The customer shall bear the costs and responsibility for provision in good time of:
  - a) All ground, construction and other third-party ancillary works, including the requisite trained personnel and workers, construction materials and tools;
  - b) The equipment and materials needed for assembly and commissioning, such as scaffolding, lifting and other equipment, fuels and lubricants;
  - c) Energy and water, including connections at the point of installation; heating and lighting;
  - d) Sufficiently large, suitable, dry and lockable rooms at the point of installation for storing machine parts, valves, materials, tools, etc.; reasonable work and recreation rooms for the installation team, including adequate sanitary facilities. The customer shall take the same precautions in all other respects to protect the supplier's property and the installation team as he would to protect his own property;
  - e) Any protective clothing and equipment that are needed for the special circumstances prevailing at the assembly site.



## General Terms and Conditions of Delivery

2. Prior to the start of the assembly works, the customer shall voluntarily provide any necessary details relating to the routing of any concealed power, gas or water lines or any other similar systems, together with the necessary structural information.
3. Prior to commencing installation or assembly, the materials and equipment needed for the work must be at the installation or assembly site and all preliminary works prior to commencing installation must have progressed to a sufficient degree to allow the installation or assembly works to be commenced and executed without interruption in accordance with the contract. The routes to and from the installation or assembly site and the site itself must be even, cleared and usable.
4. In the event that the installation, assembly or commissioning is delayed for reasons beyond the supplier's control, the customer shall bear the costs of idle time and any additional journeys by the supplier or the installation team; such costs must be kept within reason.
5. The customer shall provide the supplier with a weekly schedule of the time worked by the installation team and shall notify the supplier immediately once installation, assembly or commissioning is completed.
6. If and to the extent that the supplier requests acceptance of the delivery following completion, the customer shall perform such acceptance within two weeks. In the event of non-compliance by the customer with the aforementioned provision, the delivery shall be deemed to have been accepted. The delivery shall equally be deemed to have been accepted when the delivered goods are put into service – following completion of an agreed testing period, if appropriate.

### VII. Receipt of deliveries

The customer shall not be entitled to refuse deliveries on grounds of insignificant defects.

### VIII. Material defects

The supplier shall be liable for material defects as follows:

1. All parts or works that demonstrate a material defect during the limitation period – irrespective of the service life – shall be repaired, replaced or reworked at the discretion of the supplier on condition that the cause of such defects was already present at the time of transfer of risk.
2. The limitation period for material defects is twelve months. This shall not apply in cases where longer limitation periods are prescribed by law pursuant to Sections 438 (1) (2) (building structures and equipment for building structures), 479 (1) (right of recourse) and 634a (1) (2) (construction defects), or in cases of injury to life, limb or health, in cases of intentional breaches of obligations or gross negligence by the supplier, or if a defect is intentionally misrepresented by silence on the part of the supplier. The aforementioned



## General Terms and Conditions of Delivery

provision is without prejudice to the statutory provisions governing the suspension or interruption and resumption of the limitation period.

3. The customer shall notify the supplier immediately and in writing of any material defects.
4. If the customer notifies the supplier of defects, the customer shall be entitled to withhold payments in an amount that reasonably reflects the scope of the material defects. The customer shall only be entitled to withhold payments if he has notified the supplier of a defect. In the event that a complaint proves to be unfounded, the supplier shall be entitled to demand compensation by the customer of the expenses incurred by the supplier.
5. The supplier must first be given the opportunity to rectify the defect within a reasonable period.
6. If such rectification fails to remedy the defect, the customer shall be entitled to withdraw from the contract or to reduce payment – notwithstanding any entitlement to further compensation of damages pursuant to Art. XI.
7. Warranty claims shall not be assertable if non-compliance with the agreed properties is only negligible or if the suitability for use is only impaired to a minor degree, or in cases of natural wear or of damages arising after the transfer of risk as a result of incorrect or improper treatment, excessive use, the use of unsuitable operating equipment, faulty construction works, unsuitable foundations, as a result of particular external influences that are not defined as conditions in the contract, or if the customer performs unprofessional modifications or repairs.
8. Claims asserted by the customer for expenses incurred in connection with subsequent performance, and especially transportation, travel, labour and costs, shall be excluded if and to the extent that the expenses increase as a result of the merchandise being subsequently moved to a different location than the customer's premises following delivery, unless such relocation is consistent with the intended utilisation of the delivery.
9. The customer shall only have right of recourse vis-à-vis the supplier pursuant to Section 478 German Civil Code (BGB) (entrepreneur's right of recourse) to the extent that the customer has not concluded any other agreements that extend beyond the statutory warranty claims with its customer. No. 8 shall also apply mutatis mutandis with regard to the scope of the customer's right of recourse vis-à-vis the supplier pursuant to Section 478 (2) BGB.
10. In all other respects, Art. XI (Other claims for compensation) shall apply for claims for compensation. Claims asserted by the customer against the supplier and the latter's vicarious agents on grounds of material defects that extend beyond, or differ from, those governed by this Art. VIII are excluded.

### IX. Industrial property rights and copyrights: Defective titles

1. Unless otherwise agreed, the supplier shall only be obliged to ensure that the delivery does not infringe any industrial property rights and copyrights of third parties (hereafter: property rights) in the country of delivery. If and to the extent that a third party asserts jus-



## General Terms and Conditions of Delivery

tified claims against the customer on grounds of the infringement of property rights as a result of deliveries by the supplier that are utilised in accordance with the contractual agreement, the supplier shall be liable to the customer within the period defined in Art. VIII (2) as follows:

- a) The supplier shall, at his discretion and expense, either obtain a right of use for the deliveries in question, modify the deliveries in question to eliminate the infringement of the property right, or replace the deliveries. In the event that the supplier is not able to render such subsequent performance at reasonable conditions, the customer shall be entitled to assert his statutory rights of cancellation or price reduction.
  - b) The obligation of the supplier to pay compensation for damages shall be governed by Art. XI.
  - c) The aforementioned obligations of the supplier shall only be applicable if and to the extent that the customer notifies the supplier of any claims asserted by third parties immediately and in writing, does not acknowledge any infringement, and all rights of defence and settlement are reserved for the supplier. In the event that the customer ceases to utilise the deliveries for reasons of damage minimisation or other important reasons, he shall be obliged to notify the third party that the discontinuation of utilisation does not constitute any acknowledgement of an infringement of any property rights.
2. Claims by the customer shall be excluded if and to the extent that the customer is responsible for the infringement of the property rights.
  3. Equally, claims by the customer shall also be excluded if and to the extent that property rights are infringed as a result of particular specifications requested by the customer, of the deliveries being utilised for a purpose that was not foreseeable by the supplier, or of the incorrect utilisation of the products delivered by the supplier.

### X. Impossibility; Contractual modification

1. If and to the extent that delivery is impossible, the customer shall be entitled to demand compensation for damages unless the reasons for the inability to deliver are beyond the supplier's control. Such claim by the customer for compensation of damages shall, however, be restricted to 10% of the value of that part of the delivery that cannot be put to its intended use as a result of the impossibility. This shall not apply where statutory liability governs cases of intent, gross negligence, or injury to life, limb or health; this does not constitute a reversal of the burden of proof to the disadvantage of the customer. The aforementioned provision is without prejudice to the customer's right to withdraw from the contract.
2. The contract shall be modified to a reasonable extent and under consideration of the principles of equity and good faith if and to the extent that unforeseeable events in the context of Art. IV (2) result in a considerable change in the economic importance or content of the delivery or exert a considerable impact on the supplier's business. If and to the extent that such modification is not feasible in economic terms, the supplier shall be enti-



## General Terms and Conditions of Delivery

tled to withdraw from the contract. In the event that the supplier wishes to exercise this right of withdrawal, he shall be obliged to notify the customer immediately upon becoming aware of the extent of the consequences of the event even if the supplier has first agreed an extension of the delivery period with the customer.

### XI. Other claims for compensation

1. Unless otherwise stated in these Terms and Conditions, claims by the customer for compensation of damages and expenses (hereafter: claims for compensation) shall be excluded, irrespective of the legal grounds on which they are asserted, and especially on grounds of violation of contractual obligations or impermissible actions.
2. This shall not apply in cases that are governed by statutory liability, such as violations of the German Product Liability Act, in cases of intent or gross negligence, of injury to life, limb or health, or of violations of material contractual obligations. Any claim for compensation for violations of material contractual obligations shall, however, be restricted to the losses that are foreseeable and typical for this type of contract, except in cases of intent or gross negligence, or of injury to life, limb or health. These aforementioned provisions do not constitute a reversal of the burden of proof to the disadvantage of the customer.
3. If and to the extent that the customer is entitled to assert claims for compensation pursuant to this Art. XI, the limitation period for such assertion shall expire upon expiration of the limitation period defined in Art. VIII (2) for warranty claims. Statutory limitation periods apply to claims for compensation pursuant to the German Product Liability Act.

### XII. Court of jurisdiction and applicable laws

1. If the customer is a merchant, the registered office of the supplier shall be deemed to be the court of jurisdiction for all disputes arising in direct or indirect connection with the contractual relationship. The supplier shall, however, also be entitled to initiate proceedings before the court that is responsible for the customer's registered office.
2. All legal relationships associated with this contract shall be governed by the laws of the Federal Republic of Germany; the United Nations Convention on the International Sale of Goods (CISG) is excluded.

### XIII. Validity of the contract

In the event that individual provisions of this contract should prove to be legally ineffective, this shall not affect the validity of the remaining provisions. This shall not apply if adherence to the contract would represent unreasonable hardship for one of the parties. Amendments and addition to the contract and to these terms and conditions shall only be valid if stipulated in writing; this shall apply equally to any partial or complete waiver of this clause specifying the written form.