

# General Terms and Conditions of Sale, Delivery and Payment



## I. Scope of validity

1. All of our consignments and services on the basis of contracts of sale and contracts for work (hereinafter: consignments), including future consignments, are carried out exclusively in accordance with these conditions of sale and delivery and terms of payment (hereinafter: conditions). These conditions may be supplemented by written product- or service-specific terms and conditions of the manufacturer from whom we are supplied. Supplementary or deviating general business conditions of the customer are only valid if we have expressly agreed this with the customer. The terms and conditions of the customer or third parties shall not apply even if we have not expressly opposed them in the particular case. Even if the customer refers to a letter, which includes or refers to the customer's or a third party's terms and conditions, the application of those terms and conditions is not accepted thereby.
2. Our conditions are valid only in dealings with persons who in concluding a legal transaction with us do so within the framework of their commercial or self-employed professional activity (businesspersons as defined by § 14 German Civil Code). This also includes legal entities under public law as well as public special funds.

## II. Conclusion of the contract, quality of our goods

1. Our offers are without engagement and not binding. A contract is only concluded upon receipt of our written order confirmation or upon delivery of the goods.
2. The decisive data for the contents of the contract are our offer including any lists of obligations, our written confirmation of order as well as these present conditions. Other agreements with regard to execution of the contract, in particular subsequent amendments, supplements or collateral agreements only count as contents of the contract if we have expressly agreed these with the customer. Any such agreements shall be set forth in writing. Except for the members of the managing board or the authorised signatories (German Prokurist), our employees shall not be entitled to come to any agreement or covenant any supplements with legal effect.
3. Only those characteristics and features that are expressly designated as agreed quality in our offer and in our confirmation of order are deemed to be agreed quality of our consignments. The mere mention of a characteristic or a feature in an appendix to the offer or to the confirmation of order (e. g. in diagrams, drawings, dimension sheets) is not sufficient for this, as these are base values before elaboration of the technical concept. Other or additional characteristics and features are only deemed to be agreed quality if we have expressly agreed these to be such with the customer. Any such agreements regarding quality shall be set forth in writing.
4. We reserve the right to effect technical, design-related and customary deviations from descriptions and data in leaflets, catalogues and in written documents as well as changes to models and other changes to a reasonable extent in the wake of technical progress, insofar as this does not impair the suitability of the product for the stipulated purpose.
5. Declarations with regard to the quality and durability of our consignments only represent a guarantee of quality and/or durability if we have expressly designated these to be such a guarantee. The declaration of guarantee shall be set forth in writing.

## III. Delivery, passage of risk

1. Unless assembling / installation / commissioning at the customer's premises has been expressly agreed, the risk of accidental loss/deterioration of the consignment shall pass to the customer when it leaves the delivering works or warehouse („ex works“ in accordance with the INCOTERMS valid at the time) or the consignment has been handed over to a forwarding agent or carrier, even if justified partial consignments are made. If shipment or handover is delayed due to circumstances for which we are not responsible, the risk shall be transferred to the customer on the very day when the consignment is ready for dispatch and the customer has been notified thereof.
2. The above provisions shall also apply if we have undertaken the assembling / installation / commissioning of the consignments at the customer's premises.
3. We shall be entitled to make partial consignments if the customer can use them within the scope of the intended use stipulated, if delivery of the remainder of goods is ensured, and if the customer will not incur any extra expenditure or additional costs thereby.
4. We will cover the consignment by an insurance against damage by theft, breakage, transport, fire and water or any other insurable risk should the customer ask for this; the costs accruing in this connection shall be at the customer's expense.

## IV. Delivery periods, delivery obstacles

1. In the case of contracts without assembling / installation / commissioning, the delivery period shall be deemed to have been met when the consignment leaves the delivery works or warehouse or the consignment has been handed over to a forwarding agent / carrier. In the event of a delay not attributable to us, the notification to the customer of readiness for dispatch shall be decisive. In the case of contracts with assembling / installation / commissioning, receipt at the customer's premises shall be decisive.
2. Compliance with the agreed delivery periods presupposes the timely clarification of all technical questions as well as the timely receipt of all documents, necessary approvals and releases and in particular of plans that are to be provided by the customer as well as compliance with the agreed terms of payment and other obligations or responsibilities by the customer. If these pre-conditions are not fulfilled in good time, the deadlines shall be extended by a reasonable period of time; this does not apply if we are responsible for the delay. Subsequent wishes of the customer for changes and supplements extend the agreed delivery time by a reasonable period of time.
3. Insofar as we have concluded an equal or a correspondingly timed cover transaction with our upstream supplier in good time, the delivery dates stated by us are subject to the reservation that deliveries to us are properly effected in good time, which we have pointed out to the customer. This applies in particular to delivery bottlenecks that may occur as a result of disruption to the supplier's operations through no fault of their own or a pandemic. As far as possible, we will offer alternative solutions with possible additional costs in these cases.
4. In cases that fall under IV. 3., we are entitled to withdraw from the contract if we are unable to meet the delivery dates and times agreed with the customer because deliveries to us have not been properly effected in good time for a reason not attributable to us. In such a case we are obliged to notify the customer without delay of the non-availability of the consignment and to reimburse to the customer any payments made or other counter-performance without delay.
5. If the delivery is delayed for reasons for which we are responsible, we bear liability only and exclusively in accordance with the legal regulations subject to the limitations of liability stated in IX. below.

## V. Prices and payments

1. Our prices are valid net ex dispatching works or warehouse not including turnover tax, loading, packing, freight charges, postage and, for export shipments, customs duties and fees as well as insurance, unless we have expressly agreed anything to the contrary with the customer. Price agreements must be set forth in writing. The non-returnable packing is charged at cost price.
2. Unless a fixed price agreement has been made, we reserve the right to adjust our prices accordingly if our production and delivery costs increase after conclusion of the contract due to circumstances for which we are not responsible (e. g. wage tariff increases, increases in prices of materials, increases in taxes etc.), and we will inform the customer about the increase in price in good time prior to delivery. The same applies if the customer wishes to change the delivery date or the scope of delivery and we incur additional costs as a result.
3. Insofar as we have undertaken to carry out the assembling / installation / commissioning of the consignments, besides the agreed remuneration the customer shall also bear all necessary ancillary costs such as travel expenses, transport costs, unless we have expressly agreed anything to the contrary with the customer. Any such agreements shall be set forth in writing.
4. Our invoices are immediately due and payable without any deduction on receipt of the invoice. Payment does not count as having been effected until we can finally dispose of the amount.
5. If any endangerment of our claims for payment can be perceived due to the inability or limited ability of the customer to pay, we shall be entitled to make all receivables deriving from the respective contractual relationship with the customer that are not yet due and payable immediately due and payable insofar as we have already delivered our consignments. Such an endangerment exists if information from a bank or a credit-reporting agency indicates the lack of creditworthiness of the customer. In this case we are furthermore entitled to set the customer a reasonable period of time, during which the customer shall at its discretion either ensure that payment or counter-performance is progressively effected against execution of the still outstanding consignments or the customer shall progressively provide suitable security. If this period passes without such counter-performance being made or such security being provided, we may withdraw from the contract. In the case of a suspension of payments or overindebtedness of the customer, it is not necessary to set an extension period.
6. If the customer is in default with regard to payment, we are entitled to interest on payments in arrears in accordance with the legal regulations.
7. If, after conclusion of the contract, we agree to the transfer of the contract as a whole or with regard to individual rights and obligations to a leasing company, the customer shall be liable in the same way until the necessary commitment agreement will have been concluded.
8. The customer can only set off undisputed or legally established counter-claims. Furthermore, the customer shall be entitled to make use of its right of retention only insofar as its counter-claim is based on the same contractual relationship.

## VI. Services

1. For assembling, installation, commissioning, service, maintenance and support services, our „Terms and conditions for other services“ shall apply additionally.

## VII. Force majeure

1. Cases of force majeure (unforeseen circumstances and occurrences, for which we are not responsible and which could not have been avoided through the due care and diligence of an ordinary and prudent businessperson, e.g. industrial disputes, war, fire, transport impediments, shortage of raw materials, action by the authorities, operational disruptions for which we are not responsible, pandemics etc.) suspend our obligations for the duration of their existence and the extent of their effects. Events triggered by a pandemic are considered force majeure regardless of whether they are foreseeable or unforeseeable. In case of temporary impediments, the times of delivery and performance are extended or postponed by the period of the impediment plus a reasonable starting period. This also applies if we are already in default.
2. If established by one of the circumstances specified under VII. 1. that the contract definitely cannot be accomplished or cannot be accomplished within a reasonable period of time, we shall be entitled to rescind the contract. In this respect, we are obliged to notify the customer without undue delay of the non-availability of our consignments and services and to reimburse the customer any payments made or other counter-performance without undue delay.

## VIII. Rights and duties of the customer in the case of defects

1. The customer is obliged to examine our consignments and services for defects without delay, also insofar as they have been carried out on the basis of contracts for work. The customer shall notify us of recognisable defects without delay; however, at the latest within eight working days. The inspection and complaint period shall commence upon handing over, in the case of consignments including assembling / installation / commissioning after their completion or, insofar as trial operation has been expressly agreed, after its completion. The customer shall notify us of any hidden defects without delay after these have been discovered. If the customer omits to immediately examine the consignments and to file any complaints in good time, the customer cannot file any claim on account of a defect.
2. If the customer has performed its duty to examine and the requirement to make a complaint in respect of a defect immediately on receipt of the consignments and services, the following shall apply:
  - a) If the quality of our consignments deviates from the agreed quality only to an immaterial extent, the customer shall only have a right to an appropriate reduction of the price. If no quality has been agreed upon, the standard quality shall apply.
  - b) In the case of deviations within the meaning of the preceding section a) that are not immaterial, the claims of the customer due to defects are initially limited to a right to subsequent fulfilment. We shall have the right to choose between rectification of defects or replacement delivery. Should this fail, i.e. the remedy of the defect or subsequent delivery is impossible, unreasonable, denied or inadequately delayed, the customer shall be entitled to any other statutory rights in case of defects. Subsequent fulfilment is deemed to have failed after the second attempt without success unless the nature of the consignments and services or of the defect or other circumstances provide otherwise.
  - c) Should we, pursuant to VIII. 2. b), be liable to pay damages instead of or in addition to the consignments and services to be provided, our liability shall be governed by IX.
  - d) If only individual consignments from among several consignments sold are defective, any legal right of the customer to rescind the contract is limited to these. This also applies if the consignments were sold as belonging together, unless the defective consignments cannot be separated from the others without damage or if the customer cannot reasonably be expected to accept this. The reasons why the customer cannot reasonably be expected to accept this shall be substantiated by the customer. The preceding regulations are also valid by analogy with regard to individual defective parts of a consignment insofar as apart from this the consignments remain usable – even if this is achieved by means of a covering purchase elsewhere.

# General Terms and Conditions of Sale, Delivery and Payment



- e) The warranty shall not be applicable, if the customer modifies the supplied item or has it modified by third parties without our consent and elimination of the defect is hence impossible or rendered unreasonably difficult. In any case, the customer undertakes to bear the additional costs arising from the modification.

## IX. Limitations of liability, exclusion of withdrawal from the contract

- Unless otherwise stipulated in these conditions, claims for damages by the customer are excluded, irrespective of the legal grounds, in particular due to breach of contractual duties.
- This does not apply insofar as liability is assumed as follows:
  - under the Product Liability Act,
  - in the event of malice, intent or gross negligence,
  - in the event of non-compliance with a guarantee,
  - due to culpable injury to life, body or health,
  - due to the culpable breach of essential contractual obligations.However, the claim for damages for the breach of essential contractual obligations under letter e) shall be limited to the foreseeable damage typical for the contract, unless another of the aforementioned cases applies. For a single case of damage according to letter e), the liability is limited to the contract value, in the case of ongoing remuneration to the remuneration per contract year.
- Insofar as our liability is excluded or limited in accordance with the preceding paragraphs, this shall also apply to the liability of our representatives, servants and vicarious agents.
- Rights of the customer to withdraw from the contract due to a violation of a duty for which we are not responsible and which does not consist in a defect of the goods, are excluded.

## X. Limitation periods

- Claims of the customer due to a deficiency of the consignments become statute barred after one year.
- Other claims of the customer due to violations of duties also become statute barred after one year.
- Contrary to X. 1. and 2., the statutory limitation periods apply to the following claims of the customer:
  - on account of damage resulting from injury to life, body, health or from the violation of an essential contractual duty,
  - on account of other damage resulting from an intentional or grossly negligent violation of duties by us, by our legal representatives or our vicarious agents,
  - on account of a defect in a construction or in such an object that has been used for a construction in accordance with its normal use and that has caused the defectiveness of the construction,
  - on account of a malicious failure to disclose a defect.
- Claims of the customer deriving from a guarantee of quality or durability become statute barred after one year; the start of the statutory limitation period depends on statutory provisions.

## XI. Retention of title

- Our consignments remain our sole property until all claims and receivables (including all balance claims from current accounts) against the customer accruing to us now or in the future for any legal reason whatsoever will have been settled.
- The processing or transformation of our consignments by the customer is always carried out on our behalf. If our consignments are processed, transformed, inseparably mixed or joined with other objects that do not belong to us, we acquire the co-ownership of the new object in the ratio of the value of our consignments to the value of the other processed object at the time of processing, transformation, mixing or joining. If the other object is to be seen as the main object, it is now already agreed that the customer shall confer pro rated co-ownership upon us. We accept this transfer of co-ownership. The customer shall keep our (jointly owned) property in safe custody for us free of charge. Apart from this, the same applies to the product arising as a result of the processing as applies to the consignments that we made under reservations.
- The customer is entitled to process and to sell our consignments in the way of business as long as the customer is not in default with its payment commitments towards us. Pledging or transfer of ownership by way of security shall be prohibited. The customer herewith already assigns to us any and all claims arising from the resale of our consignments (including all balance claims from current accounts), insurance claims as well as claims against third parties on account of damage, destruction, theft or loss of the goods. We accept this assignment of claims. If we have only co-ownership in the consignments delivered by us, this advance assignment of claims is limited to that part of the claim that corresponds to our share of co-ownership (on the basis of the invoice value). In the case of the resale of the consignments, the customer must reserve title to same vis-à-vis its customers until the purchase price has been paid in full. The customer is not entitled to resell the goods to third parties if the claim for payment of the purchase price deriving from such resale is subject to a ban on assignment.
- We revocably authorise the customer to collect the receivables assigned to us for the customer's own account and in the customer's own name. This authorisation to collect can be revoked if the customer fails to properly meet its payment commitments towards us or if our claims appear to be endangered due to the inability or limited ability of the customer to pay. On demand, the customer shall name to us the debtors of the assigned receivables. If the customer assigns its receivables from the resale to a service provider who bears the default risk (genuine factoring), the customer shall notify us of this. The customer already assigns to us its claim against the factor deriving from the assignment of the claims for payment in the amount of the claims and receivables that are to be secured by this retention of title.
- In the case of seizure or attachment of consignments, that fall under our retention of title, by third parties, the customer shall draw attention to our title and shall notify us without delay. Our intervention costs shall be borne by the customer, to whom we will progressively assign any claims against the third party for the reimbursement of costs against payment of the intervention costs.
- The customer is entitled to demand the release of claims from us insofar as the value of our securities exceeds our claims to be secured by more than 10 %. We have the choice of any claims that are to be released.
- The customer shall insure the delivery items owned by us against loss and/or destruction. In the case of consignments delivered abroad, the customer shall ensure that a security interest corresponding to this extended retention of title is granted to us by separate agreement.

## XII. Industrial property rights and copyright, licences, know-how

- We reserve our rights of ownership and copyright in respect of diagrams, drawings and other documents as well as the software programmes and documentation provided to the customer as well as all industrial property rights without any restrictions. These must not be made accessible to third parties without our express consent. Such consent shall be given in writing. The same applies to corresponding rights of manufacturers to their illustrations, drawings and other documents.
- With regard to software programmes and corresponding documentation provided by us, our license conditions shall apply. The software programmes are intended only for the customer's own use within the framework of a simple, non-transferable licence, and are strictly for use in connection with products delivered by us. Copies may only be made for archiving purposes, as replacements or for fault diagnosis; however, we shall not accept any costs or liability in this respect. Insofar as originals bear a note indicating that they are protected by copyright, this shall also be attached by the customer to copies.
- With regard to licences sold by us pertaining to software produced by third parties, the licence regulations and restrictions of such producers shall apply.
- The customer is entitled to use the software on other devices of the same type belonging to the customer within the framework and scope of the acquired rights of use. In the event of migration to new hardware, the software on the devices / products previously used must be deleted.
- The user documentation can be delivered as printed or electronically stored version at our discretion.
- The customer shall be responsible for backing up the programmes and data of the software installed.
- Insofar as a separate licence or software agreement is concluded, contrary to 2. this agreement is valid regarding the questions regulated therein.
- The customer undertakes to treat all information received in connection with the contract and not generally accessible, in particular business secrets and know-how, as confidential and to not make it accessible to third parties without our prior consent. If a corresponding confidentiality agreement is concluded, this shall take precedence.

## XIII. Calibration

- The designs of weighing systems that are subject to legal verification (calibration obligatory or calibratable) depend on the construction and calibration regulations prescribed by the authorities on the day of placing the order in respect of that type of weighing system which applies according to the data provided by the customer or to the recognisable purpose for which the weighing system is to be used. If we are informed by the customer, before the order is placed, that the consignment is destined for a foreign country, the construction and calibration regulations of the destination country shall be taken as the basis. In the case of weighing systems that are not subject to legal verification and in the case of weighing systems for which we cannot ascertain from the task profile and from the detailed description of the customer to what extent they are subject to legal verification, we are only obliged to ensure accuracy to the extent that derives from the confirmation of order.
- In the case of consignments, which cover parts for weighing systems that are subject to legal verification (calibration obligatory and calibratable), we shall bear no liability for ensuring that the suitability for calibration remains unimpaired in any type of integration of these parts. We are prepared to give the customer suggestions for the suitable and expedient installation of the parts delivered to the customer.

## XIV. Applicable law, place of performance, place of jurisdiction

- The contract is exclusively governed by German substantive law to the exclusion of the UN Agreement concerning Contracts for the International Sale of Goods (CISG) as well as to possible conflict of law and referral rules.
- The place of performance for our consignments ex works is the corresponding dispatching factory or warehouse. The place for payment for the customer is our registered office and principal place of business in Bremen / Germany.
- The exclusive mutual place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Bremen / Germany if the customer is a businessman, a legal person under public law or a public special fund. However, we also have the right to take legal action against the customer at its general place of jurisdiction.
- Also in the case of cross-frontier consignments, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be Bremen in the Federal Republic of Germany. We reserve the right to also have recourse to any other court that is competent and responsible at the local and international level.
- If the customer resides beyond the Federal Republic of Germany but within the EU, the customer shall be committed to compliance with the Turnover Tax Law applicable in the EU. The customer is obliged to give notice of its VAT registration number and to make available necessary information as to the customer's status as entrepreneur, the use and transport of our consignments and the statistical obligation to register.
- Personal data is collected, used and stored by us in accordance with the applicable data protection regulations.
- Should the agreement entered into be incomplete or should single provisions of the agreement be or become ineffective – entirely or partly – this shall not affect the validity of the remaining provisions. The parties agree to replace the invalid provision by and/or supplement the agreement with a valid provision which comes as close as possible to the original intention the parties had in mind in respect of the missing or invalid provision.

## XVII. Export permits

- The export of delivery items and/or technical know-how may be subject to domestic and/or foreign export control regulations, in particular those of the U.S.A. The customer undertakes to comply with all applicable export control regulations and to impose these obligations on any purchaser in the same way.

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