

# CONDITIONS OF SALE AND DELIVERY AND TERMS OF 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). The present conditions may be supplemented by written product- or performance-specific conditions of the manufacturer, which is our supplier. Supplementary or deviating general business conditions of the customer are only valid if we have expressly agreed this with the customer. The business 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 business conditions, the application of those business 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 does not come into force until our written confirmation of order has been received or the goods have been shipped.
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. Transmission by telefax meets the written form requirement. Except for the members of the managing board and the authorised signatory (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 of our consignments that are expressly designated as agreed quality in our offer and in our confirmation of order are deemed to be agreed quality. 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. 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 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 warranty of quality and/or durability if we have expressly designated these to be such a warranty. The declaration of warranty shall be set forth in writing.

## III. Delivery, passage of risk

1. If assembly / installation / commissioning on the customer's premises has not been expressly agreed, the risk of accidental loss / accidental deterioration of any consignment shall be transferred to the customer as soon as the consignment leaves the dispatching factory or warehouse („ex works“ as defined in the latest applicable INCOTERMS) or as soon as the consignment is handed over to the freight forwarder or carrier; this shall also apply in case of legitimate partial deliveries. If shipment or handover is delayed due to circumstances, the fault for which cannot be attributed to us, 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 preceding regulations apply as well if we have taken over assembly / installation / commissioning of the consignments on the customer's premises.
3. We shall be entitled to make partial deliveries if the customer can use them within the scope of the stipulated intended use, if delivery of the remainder of delivery is ensured, and if the customer will not incur any significant extra expenditure or additional costs thereby.
4. We will cover delivery 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 holdups

1. In case of contracts without assembly / installation / commissioning, the delivery time is deemed to be adhered to when the consignment leaves the dispatching factory or warehouse or when the consignment has been handed over to a freight forwarder / carrier. Should a delay occur, which is not attributable to us, the advice of readiness for shipment to the customer shall be decisive. For contracts also covering assembly / installation / commissioning, the time of arrival on the customer's premises shall be decisive.
2. Compliance with the agreed delivery periods presupposes timely clarification of all technical questions as well as 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 by the customer. If these pre-conditions are not fulfilled in good time, the deadlines shall be extended by a reasonable length of time; this does not apply if we are answerable for the delay. Subsequent wishes of the customer for changes and supplements extend the agreed delivery time by a reasonable length of time.
3. Insofar as we have concluded a matching cover transaction with our upstream supplier in good time, the delivery dates named by us are subject to the reservation that deliveries to us are properly effected in good time, which we pointed out to the customer.
4. In cases that fall under IV. 3, we are entitled to withdraw from the contract if we – due to a fault which cannot be attributed to us – 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. 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 answerable, 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 factory or warehouse not including VAT, loading, packing, freight charges, postage, and for export shipments customs duties and fees, as well as insurance, except and unless we have expressly agreed anything to the contrary with the customer. Price agreements shall be set forth in writing. The non-returnable packing is charged at cost price.
2. 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 answerable (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 and we incur additional cost as a result.
3. Insofar as we have undertaken to carry out the assembly / installation / commissioning of the consignments, besides the agreed remuneration the customer shall also bear all necessary ancillary costs such as travel expenses, transport costs, except and 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 it is possible to perceive any endangerment of our claims for payment 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. This also applies if we have already accepted bills of exchange or cheques. Such an endangerment exists if information from a bank or a credit-reporting agency indicates the lack of creditworthiness of the customer. The same shall apply if the customer is in default with regard to the payment of at least one invoice. In this case we are furthermore entitled to set the customer a fair and 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 possible to dispense with the setting of 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 we – after conclusion of the contract – agree to transfer the entire contract or individual rights and obligations thereof to a leasing company, the customer shall be liable similarly for the period of time between the intended delivery of the supplied item and the conclusion of the required pledge agreement.
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. To assembly, installation, commissioning, service, maintenance, and support the „Terms and conditions for other services“ shall apply in addition.

## VII. Force majeure

1. Cases of force majeure (unforeseen circumstances and occurrences, for which we are blameless, 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 holdups, shortage of raw materials, action by the authorities, etc.) suspend our obligations for the duration of their existence and the extent of their effects. 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 8 working days. The period for examination and for filing complaints will begin at the time of delivery; in the case of consignments including assembly / installation / commissioning, the period for examination and for filing complaints will begin when these activities will have been completed or, insofar as trial operation was expressly agreed, after this will have been concluded. 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 goods, 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 have the right to choose between remedy of the defect and a subsequent 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 legal rights in case of defects. Subsequent fulfilment is deemed to have failed after the second attempt without success if no other result is reached deriving in particular from the nature of the object or from other circumstances.
  - c) Should we, pursuant to VIII. 2 b), be liable to pay damages instead of or in addition to the service 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, except and unless the defective products or systems 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 set forth 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.
  - 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

1. Any liability for culpable fatal injury, personal injury, or injury to health remains unaffected; this shall also apply to any mandatory liability arising from the ProdHG [German Product Liability Act]. The same shall apply to fraudulent intent.
2. We shall be liable as defined by statutory provisions in case the customer asserts claims for damages due to intent or gross negligence by us, our agents or vicarious agents or due to breach of an essential covenant. If we are not charged with intentional or grossly negligent breach of contract, the liability for damages shall be limited to the foreseeable, typical damage. A foreseeable, typical damage does not include lost profit or consequential damage of the customer. For the case of slight negligence, our liability shall be limited to the benefits and contractual sums of the manufacturer's and product liability insurance we have taken out and which we will present to the customer upon request. Insofar as the insurance we have taken out does not pay benefit (e.g. because of retention or annual maximisation), we pay damages ourselves in such a case, i.e. in case of slight negligence, up to the amount insured at maximum.
3. In any other case, claims for damages against us, whether arising from the contract or not, irrespective of the statutory basis, shall be excluded.

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4. Insofar as our liability is excluded or limited in accordance with the preceding paragraphs, this shall also apply to the liability of our servants and vicarious agents.
5. Rights of the customer to withdraw from the contract due to a violation of duties for which we are not answerable and which does not consist in a defect of the goods, are excluded.
6. Insofar as we have granted the customer certain rights within the framework of a warranty of quality or of durability such rights remain unaffected by the aforementioned limitation of liability.

## X. Limitation periods

1. Claims of the customer due to a defect in the consignments become statute barred after one year. Contrary to sentence 1, the limitation period for claims of the customer on account of a defect that exists in a right in rem of a third party, by virtue of which the surrender of the consignments can be demanded, or in another right that can be registered in landed property, is three years.
2. Other claims of the customer due to violations of duties also become statute barred after one year.
3. Contrary to X. 1 and 2, the statutory limitation periods apply to the following claims of the customer:
  - a) on account of damage resulting from injury to life, limb, health or from the violation of a major contractual duty,
  - b) 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,
  - c) 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,
  - d) on account of a malicious failure to disclose a defect.
4. X. 3 applies by analogy in respect of the rights of the customer to withdraw from the contract due to a violation of duties for which we are not answerable and which does not consist in a defect of the goods.
5. Claims of the customer deriving from a warranty of quality or durability become statute barred after one year; the start of the statutory limitation period depends on statutory provisions.
6. Our claims against the customer become statute barred in accordance with the legal regulations.

## XI. Retention of title

1. 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 whatever will have been settled.
2. 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 delivered with reservation.
3. 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 further sale of our consignments (including all balance claims from current account), 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 further sale of the consignments, the customer shall reserve title to same vis-à-vis its customers until the purchase price has been paid in full. The customer is not entitled to sell the goods further to third parties if the claim for payment of the purchase price deriving from the further sale is subject to a ban on assignment.
4. 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 further sale of the goods within the framework of 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 claim that was to be thus secured.
5. In the case of seizure or attachment by third parties of consignments that fall under our retention of title, the customer shall draw attention to our title and shall notify us without delay. Our intervention costs shall be borne by the customer, to which we will progressively assign any claims against the third party for the reimbursement of costs against payment of the intervention costs.
6. The customer is entitled to demand the release of claims from us insofar as the value of our security exceeds our claims that are to be secured by more than 10 %. We have the choice of any claims that are to be released.
7. The customer will insure the supplied items, which are our property, against loss and/or destruction. For deliveries abroad, the customer will ensure that we will be granted a corresponding security interest by separate agreement, which covers the extended reservation of title.

## XII. Industrial property rights and copyright, licences

1. We reserve our rights of ownership and copyright in respect of diagrams, drawings, and other documents, as well as the software programmes and documentations 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 in their illustrations,

drawings, and other documents.

2. Software programmes and corresponding documentations provided by us are 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.
3. In the case of licences sold by us pertaining to software produced by third parties, the licence regulations and restrictions of such producers shall also apply.
4. The customer shall be entitled to use the software on other devices of the same type in the customer's property within the scope of the granted licence. Should migration to a new hardware take place, the software shall be deleted on the devices / products used so far.
5. We are allowed to choose delivery of the user documentation in print or electronic.
6. The customer shall have sole responsibility for backup of programmes and data of the software installed.
7. Insofar as a separate licence or software agreement is concluded, contrary to 2 this agreement is valid regarding the questions regulated therein.

## XIII. Calibration

1. 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 of which it is a question in accordance with the data provided by the customer or in accordance with 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.
2. 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

1. 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 rules and regulations of determination of the municipal system of law.
2. 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.
3. 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 businessperson, 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.
4. 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.
5. 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 so as 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.
6. The customer consents to storage and processing as defined by the regulation (EU) 2016/679 of the European parliament and of the council of 27 April 2016 on the protection of data, of the data disclosed within the scope of the contractual relationship and business relation as far as this is required to execute the contract and to render advice to the customer. In this respect, the customer's interest shall be taken sufficiently into account.
7. 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 without this provision or with the invalid provision.

## XVII. Export permits

1. The export of supplied items and/or technical know-how can be subject to domestic and/or foreign – in particular US-American – export control requirements. The customer undertakes to observe all applicable export control requirements and to impose this on a potential taker.

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