

GENERAL TERMS OF DELIVERY AND PAYMENT

As of: March 2023

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I. General Information

1. These terms and conditions as well as any and all separate contractual agreements shall be deemed as a basis for all deliveries and services. Deviating terms of purchase of the Buyer shall not become part of the contract even when an order is accepted.

A contract shall – in the absence of a separate agreement – materialize upon receipt of the written order confirmation from the supplier.

2. The Supplier reserves the right to property and copyright for samples, cost estimates, drawings and the like, information of physical and immaterial type – also in electronic form; they may not be made accessible to third parties. The supplier undertakes to obtain the prior consent of the Buyer before making any information and documents described as confidential by the Buyer accessible to third parties.

3. The Supplier renders his services as per the codes of practice generally accepted when placing the order and with customary diligence. The Supplier neither owes success succeeding the performances offered, nor is he liable for the implementation of the Buyer's wishes or goals exceeding the performances offered. If the Supplier is entrusted with research and development work, the Buyer bears the risk of research and development as well as the risk of practicability or usability of the results.

4. Part performances are allowed as far as they are reasonable for the Buyer.

5. „Ex Works Fridingen“ is to be applied (INCOTERMS as per their ruling version).

II. Price and payment

1. In the absence of a separate agreement the prices shall apply ex works including loading in the factory, however, excluding packing and unloading. The prices are completed by the respectively ruling value added tax.

2. In the absence of a special agreement, the payment for moulds and machines shall be made without any deduction onto the account of the Supplier, and namely:

- 30 % down payment when placing the order
- 65 % following date of delivery
- 5 % following commissioning, however, 30 days after delivery at the latest

Invoices for spare parts and invoices for services shall be due and payable within 30 days without deduction.

3. The Buyer shall insofar only be entitled to retain payments or to set off against counterclaims, if his counterclaims shall be undisputed or have been legally determined.

III. Time of delivery, delay in delivery

1. Time of delivery may be derived from the agreements of the contractual parties. Its observance by the Supplier requires that all commercial and technical issues between the contractual parties and the Buyer shall have fulfilled all obligations, for which he is responsible, such as provision of the necessary official certificates or permits or has made a down payment. If this is not the case, time of delivery shall be extended by a reasonable extent. This shall not apply insofar as the Supplier is responsible for the delay.

2. The observance of the delivery period shall be subject to the correct and timely self-delivery.

3. The delivery period shall be deemed as observed if the delivered object has left the Supplier's plant before expiry of the period or notification has been given that the goods are ready for delivery. Insofar as the goods are to be approved – except with justified refusal of approval – the approval date shall be decisive, alternatively the notification that the goods are ready for approval.

4. In the event that the dispatch or the approval of the delivered object shall be delayed for reasons for which the Buyer shall be responsible then he shall be charged the costs incurred through the delay beginning one

month after notification has been given that the goods are ready for dispatch or approval.

5. In the event that the non-observance of the delivery time shall be due to force majeure, industrial disputes or any other events, which are outside of the sphere of influence of the Supplier then the delivery time shall be extended accordingly. The Supplier shall inform the Buyer of the occurrence and the end of such circumstances as soon as possible.

6. The Buyer shall be entitled to rescind from the contract without notice if it shall be finally deemed impossible for the Supplier to perform the full service before passing of risk. In addition to this, the Buyer may rescind from the contract if it shall be impossible to execute a part of the delivery of an order and he shall have a justified interest in refusing the part delivery. If this is not the case then the Buyer shall pay the contractual price due for the part delivery. The same shall apply in the case of incapacity of the Supplier. Incidentally, Section VII. 4 shall apply.

Should the impossibility or the incapacity occur during the delay in acceptance or should the Buyer be exclusively or mainly responsible for these circumstances he shall be obliged to pay a consideration.

7. Should the Supplier be in default and the Buyer be entitled to damages from this then he shall be entitled to demand a flat rate compensation for default. It shall amount to 0.5 % for each full week of the delay, in total however a maximum of 5 % of the value of that part of the total delivery which cannot be used in time or as per contract owing to the delay.

Should the Buyer grant to the Supplier in default a reasonable deadline for performance – taking into account the statutory exceptional cases – after due date and should the deadline not be met, the Buyer shall be entitled to rescind from the contract within the framework of the statutory regulations.

Further claims from delay in delivery are determined exclusively according to Section VIII.2 of these terms and conditions.

IV. Passing of risk, approval

1. The risk shall pass onto the Buyer when the object of delivery has left the factory, also if part deliveries take place, or the Supplier has assumed responsibility for other services, e.g. the dispatch costs or delivery and installation. Insofar as an approval has to take place, this shall be decisive for the passing of risk. It must be carried out immediately on the approval date, alternatively after notification by the Supplier that the goods are ready for approval. The Buyer may not refuse approval in the case of an insignificant fault.

2. In the case that the dispatch or approval is delayed or omitted owing to circumstances which cannot be attributed to the Supplier, the risk shall pass to the Buyer from the date of the notification that the goods are ready for dispatch or approval. The Supplier undertakes at the cost of the Buyer to take out any insurances, which he may demand.

V. Participation duties of the Buyer

1. The Buyer shall support the Supplier adequately in the execution of the contract. He shall especially grant, to the necessary extent, access to his plants as well as to every information required, and shall make available free-of-charge skilled personnel as well as other required aids and infrastructure and notify the Supplier timely and without delay about all circumstances referring to the fulfillment of the contract.

2. As far as the performances of the Supplier concern a work, the Buyer has to accept it immediately. The owing work performances are exclusively subject to acceptance. The Supplier may demand interim acceptances of interim and part performances as long as these are basis of the further performance fulfillment. For interim respectively part acceptances, the regulations of this section V. are to be applied accordingly.

3. The statutory examination and non-conformity obligations of the Buyer according to § 377 HGB (Commercial Code) are applicable.

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4. In case of insignificant faults the Buyer must not refuse acceptance or receipt of performances.

VI. Retention of title

1. The Supplier reserves the rights to the property of the delivered object until receipt of all payments resulting from the contract of delivery

2. The Supplier shall be entitled to insure the delivered object at the cost of the Buyer against theft, breakage, fire, water and other damages, insofar as the Buyer shall not have taken out any such insurance and have provided proof of such.

3. The Buyer may neither sell, pledge nor assign as collateral the delivered object. He shall inform the Supplier immediately in case of pledges and confiscation or other disposals by a third party.

4. In case of any conduct of the Buyer which is in breach of the contract, in particular in case of default of payment, the Supplier shall be entitled to take the delivered object back after warning and the Buyer is obliged to return this. The assertion of the retention of title as well as the distraint of the delivered object by the supplier are not considered a contract cancellation.

5. The application for initiation of insolvency proceedings entitles the Supplier to rescind from the contract and to demand the immediate return of the delivered object.

VII. Warranty

The Supplier shall provide warranty for defects of quality and defects in title of the delivery under the exclusion of further claims – subject to Section VIII. – as follows:

Defects of quality

1. All parts, which prove to be faulty owing to a circumstance before passing of the risk, are to be improved free of charge at the choice of the Supplier or redelivered. Delivery items or parts thereof are only considered to be defective if they do not show the conditions agreed upon. The detection of such faults is to be immediately reported by the Supplier in writing. Replaced parts shall become the property of the Supplier.

2. The Supplier does not assume any warranty or liability for the fitness of the delivered goods for a customary use or for a general use deviating from or exceeding the conditions of the goods which have been agreed upon. Furthermore, the Supplier is not liable for the fitness of the delivered goods for a specific use envisaged by the Buyer irrespective of a possible knowledge of an envisaged purpose unless the fitness of the delivered goods for such purpose which the Buyer may have envisaged is explicitly agreed upon in writing. The Supplier's silence with regard to a purpose of use which has been submitted to Supplier's attention does not constitute a consent to the aimed purpose even if the respective contract is concluded and executed. As far as the delivery of accessories such as e.g. instruction sheets and installation guidelines as well as documentation on the purchase item is not agreed upon individually in the respective contract the Supplier shall not be obliged to deliver such accessories together with the purchase item but shall be entitled to deliver such accessories in subsequent (partial) deliveries to the Buyer which may take place after the purchase item has already been delivered.

3. The Buyer shall give the necessary time and opportunity to undertake all improvements and replacement deliveries which may appear necessary to the Supplier after consultation with the Supplier; otherwise the Supplier shall be released from the liability for the ensuing consequences. Only in urgent cases with risk of danger to the operational safety or to prevent disproportionately high damages, whereby the Supplier is to be notified immediately, the Buyer shall be entitled to correct the faults himself or have these corrected by third parties and to demand that the Supplier reimburse the necessary expenses.

4. Of the direct costs incurred through the improvement or the substitute delivery the Supplier shall bear – insofar as the complaint turns out to be justified – the costs of the replacement including dispatch. He shall in addition to this bear the costs for the dismantling and installation and moreover, if this can be justly demanded as the case may be, the costs for providing any necessary fitters and assistants.

5. Within the framework of the statutory regulations the Buyer shall be entitled to rescind from the contract if the

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Supplier – taking into account the exceptional cases laid down by law – allows a reasonable deadline set to him for the improvements or substitute delivery due to a defect of quality to pass unsuccessfully. In the event that only an insignificant fault exists, the Buyer shall merely be entitled to reduce the contractual price. The right to reduction of the contractual price remains otherwise excluded.

6. No warranty shall be assumed in particular in the following cases:

- Unsuitable or improper use,
- faulty assembly or commissioning by the Buyer or third party,
- natural wear and tear,
- faulty or negligent treatment,
- improper service,
- unsuitable production equipment and facilities,
- faulty building work,
- unsuitable building substance,

- chemical, electrochemical or electrical influences, insofar as the Supplier is not responsible of them
- delivery of used machines or components.

7. In the event that the Buyer or a third party shall make improper improvements, the Supplier shall not be liable for the ensuing consequences.

The same shall apply for any changes to the delivered object carried out without the prior consent of the Supplier.

Defects in title

8. If the use of the delivered object results in the infringement of industrial property rights or copyrights in the domestic country, the Supplier shall at his costs principally procure the Buyer the right to the further use or modify the delivered object in such a way reasonable for the Buyer that the infringement of the industrial property rights no longer exists.

If this is not possible at commercially reasonable conditions or within an appropriate deadline, the buyer shall be entitled to rescind from the contract. Under the given pre-requisites the Supplier shall also be entitled to rescind from the contract.

In

addition to this, the Supplier shall release the Buyer from undisputed or legally declared claims of the owners of the industrial property rights concerned.

9. The obligations of the Supplier stated in Section VII. 8. are subject to Section VIII. 2. conclusively in the event of the infringement of industrial property rights or copyrights.

They shall only exist if

- the Buyer informs the Supplier immediately of asserted infringements of industrial property rights or copyrights,
- The Buyer supports the Supplier to a reasonable extent in defending the asserted claims or allows the Supplier to execute the measures for modification according to Section VII. 7.,
- The Supplier reserves the right to all measures for defence including extra-judicial provisions,
- the legal defects are not based on instructions of the Buyer and
- the infringement of right was not caused due to the fact that the Buyer independently changes the delivered object or has changed this in a way not as per contract.

VIII. Liability

1. If the delivered object may not be used as per contract by the Buyer due to a fault of the Supplier owing to the omission or faulty execution of proposals made and advice given before or after conclusion of contract or through the infringement of other secondary contractual obligations– in particular instructions for operation and service of the delivered object – then the provisions of sections VII. and VIII. 2 shall apply accordingly by exclusion of further claims of the Buyer.

2. For damages not incurred to the delivered object itself the Supplier shall be liable – for no matter what legal reasons – only

- a. in case of wilful intent,
- b. in case of gross negligence of the owner / the bodies or executives,
- c. in case of negligent injury to life, body, health,

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- d. in case of faults, which he maliciously did not disclose or if he guaranteed the absence of such,
- e. in case of faults to the delivered object insofar as liability is assumed according to the product liability act for physical or material damages to the privately used objects.

In case of a negligent breach of essential contractual duties the Supplier shall also be liable in case of gross negligence of non-executives and in case of slight negligence, in the latter case limited to those damages typical as per contract and reasonably foreseeable. All other claims are excluded.

The aforementioned regulations do not involve an alteration of the burden of proof to the detriment of the Buyer.

IX. Obligation of the contract

If clauses of this contract including these General Terms of Delivery and Payment, or a clause to be incorporated into it in the future, are fully or partially legal or impracticable, or lose their validity or practicability subsequently, the validity of the other contractual clauses shall be not affected hereby. The same is true if the contract proves to contain regulation gaps. In lieu of the void or impracticable clause, or to fill the gap, an adequate provision shall be valid which, as far as legally possible, comes nearest to what the contractual parties have intended, or would have intended as per the spirit and purpose of the contract if they had thought of the item at the time of making the contract or at the later insertion of a clause.

X. Statute of limitations

All claims of the Buyer – for no matter which legal reasons – shall become statute-barred in 12 months. The statutory deadlines shall apply for wilful or fraudulent behaviour as well as in case of claims as per the product liability law. They shall also apply for defects to a building or for delivered objects, which were in line with their customary use used for a building and shall have caused such to be defect.

XI. Use of software

Insofar as the scope of delivery shall include software the Buyer shall be granted a non-exclusive and non-assignable right to use the delivered software including its documentation. It will be handed over for use for the delivered object intended for this. It is not permitted to use the software on more than one system.

The Buyer may only copy, revise, translate or convert the software from the object code to the source code in the scope as permitted by law (§§ 69 a ff. UrhG [Copyright Act]). The buyer undertakes not to remove or change information on the producer – in particular copyright notices – without the prior express consent of the Supplier.

All other rights to the software and the documentation including the copies shall remain with the Supplier or the software supplier. It is not permitted to grant sub-licences without the prior consent of the Supplier.

XII. Applicable law, place of jurisdiction, place of fulfillment

1. The decisive law of the Federal Republic of Germany for legal relations between domestic parties to each other shall apply exclusively for all legal relations between the Supplier and the Buyer.

2. Place of jurisdiction shall be the court of jurisdiction for the registered seat of the Supplier. The Supplier shall however be entitled to take action at the headquarters of the Buyer.

3. Place of fulfillment is the seat of the Supplier even though assembly and installation take place at the Buyer's.

XIII. Written form

Modifications and amendments to the contract have to be immediately confirmed by the Supplier in writing.