

Section 1 Application

1. All our supplies of goods and services and our tenders are effected solely on the basis of these General Conditions of Business. They shall constitute part of all contracts concluded with our contracting partners (hereinafter also referred to as clients) concerning the good and services offered by us. They shall also apply to future supplies of goods and services or tenders to clients, even if not specifically agreed again at the time.
2. No conditions of business of clients or third parties shall apply. This shall be the case even if their validity is not contradicted in individual instances. Even if we refer to a letter containing or referring to conditions of business of the client or a third party, this shall not be construed as consent to the validity of those conditions of business.

Section 2 Offer, and formation of contract

1. All tenders from us are subject to change and non-binding, unless expressly acknowledged as binding or containing a specific acceptance period. We shall be entitled to accept orders or jobs within 14 days of their receipt by us.
2. Legal relations between ourselves and the client shall be based solely upon the written contract, including these General Conditions of Business. This shall set out all the agreements between the contracting parties on the subject matter of the contract. Oral undertakings on our part prior to concluding the contract shall not be legally binding, and the written contract shall replace any oral agreements between the contracting parties, unless the latter expressly provides that they shall continue to apply. Addenda or amendments to the contract made, including to these General Conditions of Business, must be in writing to be valid. With the exception of directors or authorised signatories, our employees are not entitled to enter into oral agreements departing from this [requirement]. Transmission by fax shall satisfy the requirement to be in writing. Transmission by [other means of] telecommunication, however, in particular e-mail, shall not be sufficient.
3. Our information on the goods or services to be supplied (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) and our representation of these (e.g. drawings and illustrations) are only approximate only, unless fitness for the contractual purpose necessitates exact specifications. Such information shall not be construed as guaranteed specifications, but [merely] as descriptions of the goods or services. Normal commercial differences, and differences due to legal requirements or reflecting technical improvements, and the replacement of components by parts of equivalent worth, shall be permissible unless they adversely affect the fitness for the contractual purpose.
4. We reserve ownership and copyright in all offers and costs estimates we submit, and also in all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the client. The client may not make either these items or their contents available to third parties, disclose them, use them himself or allow them to be used by third parties, without our express consent. He must on demand by us destroy any copies he has made if they are no longer needed by him in the normal course of business, or if negotiations do not lead to the concluding of a contract. Drawings and patterns entrusted to us that do not lead to an order will be returned on request; if not, we shall have the right to destroy them 3 months after submitting the tender. [The foregoing] applies equally to documents we have entrusted to the client. The party entitled to destroy the items shall inform the other contracting party in good time in advance of his intention to destroy.

Section 3 Prices and payment

1. The [agreed] prices shall apply to the supply of the particular goods and services set out in the order confirmation. Additional or special supplies or performance shall be charged for separately. Prices shall be in Euro ex works, plus VAT. Freight and packing, and Customs charges and other public charges, fees and other costs, shall be charged separately.
2. If the agreed prices are based on list prices and delivery is not effected until more than four months after concluding the contract, the list prices valid at the time of delivery shall apply, less any agreed percentage or fixed discount.
3. We are not bound to accept follow-on orders, nor by prices agreed for previous orders.
4. Invoiced sums shall be payable within 30 days without any deductions, unless otherwise agreed in writing. The date of payment shall be deemed to be the date we receive it. Cheques shall not be regarded as payment until credited to our account. If the client fails to make payment when due, interest shall be charged on outstanding sums from the day payment is due at the rate of 8 percentage points per annum above the base rate at the time. Claims for higher interest and further damages in the event of default shall remain unaffected.
5. Setting off with counterclaims of the client, or withholding payments on the basis of such claims, shall only be permissible if counterclaims are not contested within one month of receipt.
6. We shall be entitled not to supply outstanding goods or services unless payment is made in advance, or a security provided, if we become aware after concluding the contract of circumstances which in our reasonable opinion are or may be likely to reduce severely the creditworthiness of the client, or which jeopardize payment by the client of our outstanding claims under the contractual relationship in question, including under other individual orders (covered by the same master contract).

Section 4 Delivery and delivery time

1. Delivery will be ex works.
2. Periods and deadlines proposed by us shall always only be approximate, unless a fixed period or deadline is expressly guaranteed or agreed. If shipping is agreed, the delivery time and deadline refer to the time of handing over to the freight forwarder, carrier, or other third party entrusted with the transport.
3. Where the client fails to honour his contractual obligations towards us for any period of time, we [shall be entitled to] – irrespective of our rights arising from such default by the client – an extension of the delivery and performance times, or postponement of the delivery and performance deadlines, equal to such length of time .
4. We shall not be liable for impossibility of performance or delays in performance if these are caused by force majeure or other events unforeseeable at the time of concluding the contract (e.g. disruptions of any kind to business operations, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in obtaining necessary approvals from authorities, or defaulted, incorrect or late delivery by our suppliers), for which we are not responsible. If such events make delivery of goods or services substantially more difficult or impossible and the impediment is not just temporary, we shall have the right to rescind the contract. In the event of temporary impediments, the time periods for the delivery of goods and services shall be extended, or postponed by the duration of the impediment plus a reasonable preliminary period. If the client cannot be reasonably expected to accept delivery of the goods or services as a result of the delay, he may rescind the contract by means of a declaration in writing to us made without delay.

5. We are only entitled to make part-deliveries if
 - the part-delivery is of use to the client within the contractual purpose;
 - delivery of the remainder of the goods ordered is ensured; and
 - no substantial additional expenditure or costs are incurred by the client as a result of this, unless we declare ourselves ready to assume these costs.
6. We shall be liable as provided by statute, provided that time is of the essence within the meaning of Paragraph 286(2)(4) BGB [German Civil Code] or Paragraph 376 HGB [German Commercial Code] in the underlying contract. We shall also be liable as provided by statute inasmuch as the party ordering is entitled, as a consequence of delayed delivery for which we are responsible, to claim that his interest in continued performance of the contract has ceased.

We shall be liable as provided by statute if the delay in delivery is due to a wilful or grossly negligent breach of contract for which we are responsible. Fault on the part of our servants or agents is to be attributed to us; if the delayed performance is not due to an intentional breach of contract for which we are responsible, our liability for damages shall be limited to the loss that could typically be foreseen as occurring. We shall furthermore be liable as provided by statute if the delayed performance for which we are responsible is due to a culpable fundamental breach of contract; in such cases as well, our liability shall be limited to the loss that could be typically foreseen as occurring. In all other instances, the damages for delayed performance shall be limited to 3% of the value of the goods for each complete week, subject to a maximum of 10% of the value of the goods, for that part of the delivery that could not be taken into service for the intended purpose as a result of the delay. This shall not affect other statutory claims and rights of the client.

Section 5 Place of performance, shipping, packing, passage of risk, acceptance

1. The place of performance for all obligations arising from the contractual relationship shall be Groß-Umstadt, unless provided otherwise. If we are due to carry out the installation, the place of performance shall be the place where the installation is to be carried out.
2. Unless otherwise stipulated, the method of shipping and packing shall be left to our discretion in accordance with our obligations. Special packing not charged for (including pallets) shall remain our property. The client undertakes to look after and keep this packing carefully, and to assist free of charge in loading it for the purposes of returning it.
3. Risk shall pass to the client at the latest with the handing over of the items being delivered (determined by the start of the loading process) to the freight forwarder, carrier or other third party appointed to ship the consignment. This shall also apply in the cases of part-deliveries, and when we have undertaken to perform other work (e.g. shipping or installation). If shipping or the handover is delayed as a result of circumstances caused by the client, risk shall pass to the client on the day when we are ready to despatch and have notified the client of this.
4. Warehousing costs after the passage of risk shall be borne by the client. In the event of warehousing with us, the warehousing costs shall be 0.25 % of the invoice amount of the items to be warehoused, per completed [calendar] week. We reserve the right to claim and prove further warehousing costs. If the goods are warehoused with us at the client's request (including where there is no delay), the warehousing costs shall in all cases amount to 0.25 % of the invoice amount per completed calendar week, unless expressly agreed otherwise.
5. The consignment will only be insured by us on the express wish of the client and at his expense against theft, breakage, transport, fire and water damage, or other insurance risks.
6. If an acceptance test is required, our goods and services shall be deemed to have been accepted when
 - the agreed part-delivery has been made, or if we are carrying out an installation, the partial installation has been completed (partial acceptance), but in any case when the entire delivery of goods or services has been completed;

- we have informed the client, stating that he is deemed to have knowledge of the [requirement for] acceptance and have asked him to accept;
- 12 working days have elapsed since delivery of goods or services or, where the client has begun to make use of the goods/services, 6 working days have elapsed since delivery of the goods or services; and
- the client has failed to accept within this period for any reason other than that of a defect notified to us which makes impossible or substantially impairs use of the goods supplied.

Section 6 Retention of title

1. The retention of title agreed below serves to secure all our present and future claims against the client at any one time under the present contractual relationship, including balance claims arising from a current account relationship restricted to this contractual relationship.
2. Goods delivered by us to the client shall remain our property until payment in full of all secured claims. Those goods and other goods covered in their place by this clause (Retention of Title) are referred to hereinafter as the "retained goods".
3. The client shall hold the [retained] goods in safe custody for us free of charge.
4. The client shall at his own expense take all necessary measures to prevent any impairment or loss of the rights we hold in respect of the retained goods.
5. The client shall be entitled to process and sell the retained goods in the normal course of business until enforcement takes place. Pledging and transferring by way of security shall not be permitted.
6. If the retained goods are processed by the client, it is agreed that such processing shall take place in our name and for our account as manufacturer, and we shall immediately acquire title - or if the processing involves substances owned by more than one party, or the value of the processed article is greater than the value of the retained goods, joint title (ownership of an undivided fractional share) - in the newly-created article, in the ratio of the value of the retained goods to the value of the newly-created article. In the event of our not acquiring any such title, the client here and now transfers his future title or joint title - in the above-mentioned proportion - in the newly-created article to us as security. If the retained goods are connected to, or inseparably mixed with, other articles to form a unified article, and if one of the other articles is to be regarded as the principal article, we shall, if the principal article belongs to us, transfer the joint ownership share in the unified article to the client in the ratio set out in the first sentence of this subsection.
7. If the retained goods are sold on, the client hereby now assigns the claims arising against the acquirer - in the case of our having joint title in the retained goods, in the proportion corresponding to the share of joint title - to us. The same shall apply to other claims taking the place of the retained goods or which arise in respect of the retained goods, such as insurance claims or claims in tort in the event of loss or destruction. We revocably authorize the client to call in the claims assigned to us in his own name for our account. We may only revoke this collection authorization in the event of enforcement [of a claim assigned to us against the acquirer].
8. If third parties obtain the goods, in particular as a result of pledging, the client shall immediately notify them of our title and inform us accordingly so that we can assert our ownership rights. If the third party is unable to refund us the legal or other costs incurred in this regard, the client shall be liable to us for them.
9. We may, at our discretion, release the retained goods and also the articles or claims in their place, if their value exceeds the value of the secured claim by more than 50 %.
10. If we rescind the contract due to breach of contract by the client - in particular defaulting on payment - (enforcement), we shall be entitled to demand the retained goods.

11. In countries where the validity of the retention of title is associated with particular preconditions or formal requirements, the client shall ensure compliance with these. If the client does not meet this obligation or if the agreement of a retention of title is not possible in the country in question, we shall have the right to make delivery dependent upon the granting of a directly-enforceable guarantee from a German bank or savings bank approved as a guarantor for Customs or tax debts in the sum of all the liabilities existing at the time of concluding the contract.

Section 7 Guarantee

1. The guarantee period shall be 1 year from delivery, or if acceptance is necessary, from acceptance [or deemed acceptance].
2. The goods supplied must be examined carefully immediately after delivery to the client or a third party designated by him. They shall be deemed to have been approved if no notification of an obvious defect or other defects detectable in an immediate careful inspection reaches us in writing or by fax within 7 working days of delivery of the goods, or within 7 working days of discovery of a defect or of the time when a defect would be detectable for the client in normal use of the goods without closer examination. The goods complained about shall be sent to us free of freight charges at our request. In the event of a justified notification of a defect we shall refund the costs of the most favourable method of shipping; this shall not apply if the costs increase because the goods are situated at a different place to that of the intended use.
3. In the event of material defects in the goods supplied, we undertake and are entitled to elect within a reasonable time whether to repair or replace the goods and to do so. In the event of this being unsuccessful, i.e. in the event of impossibility, unacceptability, refusal or unreasonable delay in repairing or replacing, the client can rescind the contract or reduce the price appropriately.
4. If the defect is due to fault on our part, the client may claim damages under the conditions set out below (liability for damages when at fault).
5. In the event of defects in components from other manufacturers that we are unable or, for legal reasons, not permitted to rectify ourselves, we will raise guarantee claims against the manufacturer and supplier for the account of the client, or assign these to the client. Guarantee claims against us in the event of such defects shall only exist under the other preconditions and in accordance with these General Conditions if pursuing the above-mentioned claims against the manufacturer or supplier through the courts is unsuccessful, or is pointless, for example due to an insolvency. During the legal proceedings, time shall cease to run as regards the relevant guarantee claims of the client against us.
6. The guarantee shall lapse if the client changes the goods, or has them changed by a third party, without our consent and this renders repairs of the defects impossible or unreasonably more difficult. In this instance the client shall bear the additional costs of repair caused by the change.
7. Any delivery of used goods agreed with the client in an individual instance shall take place under the exclusion of any guarantee.

Section 8 Property Rights

1. We guarantee within the scope of the rules in this section (Property Rights) that the goods delivered are free of third-party industrial property rights or copyright. Each party to the contract shall inform the other in writing without delay if claims are made against him relating to the infringement of such rights.
2. In the event of the goods supplied infringing an industrial property right or copyright of a third party, we shall at our choice and our cost either change the goods or replace them in such a manner that no third-party rights are any longer infringed and the goods continue to fulfil the contractually-agreed function, or obtain a right for the client to use them by concluding a licence agreement. If we are unsuccessful in doing this within a reasonable time, the client shall have the right to rescind the contract or reduce the contract price appropriately. Any claims for

damages of the client shall be subject to the limitation of liability rules in these General Conditions of Business (liability for damages when at fault).

3. Where products from other manufacturers supplied by us infringe rights, we shall at our discretion either assert our claims against the manufacturers and prior suppliers, or assign them to the client. Claims against us shall only subsist in these instances as regulated in this section (Property Rights), when pursuing the above claims through the courts against the manufacturers and prior suppliers is unsuccessful or pointless, for example due to an insolvency.
4. If we have to supply in accordance with drawings, models or patterns, or using parts provided by the client, the client guarantees that no third-party industrial property rights in the country of destination are infringed by this. The client shall hold us harmless against third-party claims and compensate us for any loss suffered. If manufacture or supply is prohibited by a third party invoking an industrial property right belonging to him, we shall be entitled, without examination of the legal position, to suspend work until clarification of the legal situation by the client and third party. Should such delays render continuation of the order unreasonable, we shall be entitled to rescind the contract.

Section 9 Liability for damages when at fault

1. Our liability for damages, regardless of the legal grounds, in particular impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall, if fault is involved, be limited as set out in this section (Liability for damages when at fault).
2. We shall not be liable
 - a) in the event of ordinary negligence of ourselves, our legal representatives, employees or other servants or agents;
 - b) in the event of gross negligence of our non-executive employees or other servants or agents, provided this does not involve a breach of duties in the contract. Fundamental duties are those to effect fault-free delivery and installation on time, and consultancy, protection and custody duties intended to enable the client to use the goods supplied in accordance with their contractual purposes, or to protect life and limb of the client or third party employees, or protect the property of the client from substantial damage.
3. If we are liable for damages on the merits under the above paragraphs, liability shall be limited to loss or damage that we foresaw or exercising reasonable care and diligence, should have foreseen, as a possible consequence of a breach of contract at the time of concluding the contract, taking into account circumstances known to us or that should have been known to us. Furthermore, indirect loss and consequential loss due to defects in the goods supplied may only be recovered inasmuch as such loss can be typically expected in the course of use of the goods delivered for their intended purpose.
4. In the event of liability for ordinary negligence, our duty to indemnify in respect of damage to property or bodily injury shall be limited to the sum of €1m per loss, even if it relates to a breach of a fundamental duty.
5. The above exclusions and limitations of liability apply to the same extent in relation to ourselves, our legal representatives, employees and other agents and servants.
6. If we give technical advice or act in a consultancy capacity, and this information or consultancy does not belong to the agreed contractual scope of supply, this shall be done free of charge and under the exclusion of any liability.
7. The limitations in this section (Liability for Damages when at fault) shall not apply to our liability in respect of wilful actions, guaranteed features, death, bodily injury or damage to health, or under the German Product Liability Act.

Section 10 Concluding provisions

1. The legal venue for any disputes arising from the business relations between ourselves and the client shall be our registered office. We shall also have the right to bring actions at the registered office of the client. Groß-Umstadt is the sole legal venue for actions against us. Compulsory statutory provisions relating to exclusive jurisdiction shall remain unaffected by this rule.
2. Relations between ourselves and the client shall be governed solely by the law of the Federal Republic of Germany. The UN Sale of Goods Convention (CISG) shall not apply.
3. If the contract or these General Conditions of Business leave any matters unregulated, such matters shall be deemed to be regulated by such legally-valid rules as the contracting parties would have agreed in accordance with the economic objectives of the contract the purpose of these General Conditions, had they noticed the lack of regulation.
4. This (subsection 3) shall also apply inasmuch as individual provisions of these General Conditions may be void.
5. The client notes that we store data relating to the contractual relationship under Paragraph 28 of the German Federal Data Protection Act and reserve the right to pass on the data to third parties (e.g. insurers) if necessary for performance of the contract.