

General Conditions

§ 1 General Conditions

1. The scope of the supplies or services (hereinafter called "supplies") shall be defined by the written declarations of both parties to the contract. General terms and conditions of the purchaser shall apply only where expressly accepted in writing by the supplier or service provider (hereinafter called "supplier").
2. For cost estimates, drawings and other documents (hereinafter called "documents") the supplier absolutely reserves all rights in property and copyright. Such documents must only be made available to third parties with the supplier's prior consent and shall, upon request, be immediately returned to the supplier when not awarded the contract. Clause 1 and 2 shall apply equally to the purchaser's documents; but these may be made available to third parties who the supplier permissibly assigned supplies.
3. The purchaser shall have the non-exclusive right to use standard software in unchanged form with the stipulated performance characteristics for the agreed equipment. The purchaser is allowed to make one back-up copy without the supplier's express consent.
4. Partial supplies shall be permissible where they may be reasonably expected of the supplier.

§ 2 Prices and terms of payment

1. Prices shall be ex works cash net in general and shall exclude freight, insurance, packing and the sales tax payable under the applicable law. If the supplier has undertaken the assembly or erection, the purchaser shall bear all required incidental costs in addition to the agreed contract price unless otherwise agreed. Payments shall be made free at supplier's paying office.
2. All deliveries with an order value about € 767,- the supplier shall bear all charges for packing as well as freight until receiving station in Federal Republic of Germany regardless the purchaser shall wish a dispatching way with higher charges as the supplier's proposal.
3. If there is a distance of more than 4 month between order as well as contract date and agreed and/ or real delivery date the prices from the supplier to the delivery time are valid. If the prices are higher than 11% agreed prices the purchaser is entitled to withdraw from the contract.
4. The purchaser may set off only those claims that are undisputed or have been finally determined in a legally binding manner.

§ 3 Retention of title

1. The goods supplied shall remain the Seller's property until the total contract price has been received by the Seller.

§ 4 Time for delivery; delay

1. Observance of the time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases, especially of plans to be provided by the purchaser, as well as fulfilment of the agreed terms of payment and other obligations by the purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly except where the supplier is responsible for the delay.
2. If non-observance of the time for delivery is due to force majeure such as mobilization, war, riot or similar events, e. g. strike or lockout, such time shall be extended accordingly.
3. At supplier's request the purchaser shall declare within a reasonable time whether he withdraws from the contract due to the delay in delivery or insists on delivery.

§ 5 Transfer of risk

1. Even where "carriage paid" delivery has been agreed, the risk shall pass to the purchaser as follows:
 - a) if the supply does not include assembly or erection, when goods have been delivered to or picked up by carrier. At the purchaser's request and expense, supplies shall be insured by the supplier against the ordinary risks of transport;
 - b) if the supply includes assembly or erection, the day on which they are taken over into purchaser's own service or, if so stipulated, after a satisfactory trial run.
2. If the dispatch, the delivery, the beginning or completion of assembly or erection, the taking over into purchaser's own service or the trial run is delayed for reasons within the purchaser's responsibility, or if the purchaser has failed for other reasons to accept delivery, the risk shall pass to the purchaser.

§ 6 Assembly and erection

Unless otherwise agreed in writing, assembly and erection shall be subject to the following provisions:

1. The purchaser shall provide at his own expense and in good time:
 - a) all earth and construction work and other ancillary services not specific to the supplier's trade as well as the necessary skilled and unskilled labour, materials and tools,
 - b) the equipment and materials necessary for assembly, erection and commissioning such as scaffolds, lifting equipment etc., fuels and lubricants,
 - c) energy and water at the point of use including connections, heating and lighting,
 - d) suitable dry and lockable rooms of sufficient size on the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the erection personnel including appropriate sanitary facilities. Furthermore, the purchaser shall take all measures he would take for the protection of his own property to safeguard the property of the supplier and of the erection personnel,
 - e) protective clothing and protective devices which are needed because of particular conditions on the site.
2. Before the start of assembly or erection, the purchaser shall make available of his own accord all information concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary data concerning static conditions on the site.
3. Before the start of assembly or erection, the necessary materials and equipment for taking up work must be provided on the erection site and all preparations must have advanced to such a point that the assembly or erection can be started as agreed and carried out without interruption. Access roads and the site itself must be level and clear.
4. If the assembly, erection or commissioning is delayed owing to circumstances for which the supplier is not responsible, the purchaser shall bear, to a reasonable extent, the costs of stand-by times and of any additional travelling of the supplier or the erection personnel that may be necessary.
5. The purchaser shall attest to the supplier at weekly intervals the hours worked by the erection personnel and he shall immediately confirm in writing the completion of assembly, erection or commissioning.
6. If, after completion, the supplier demands acceptance of the supply, this shall be carried out by the purchaser within two weeks, failing which acceptance is deemed to have taken place. Acceptance is also deemed to be effected if after completion of an agreed test phase, if any, the supply is put to use.

§ 7 Taking delivery

The purchaser shall not refuse delivery due to minor defects.

§ 8 Defects as to quality

For defects as to quality the supplier shall be liable as follows:

1. All those parts or services showing a defect within the limitation period, regardless of the time of operation, shall be repaired, replaced or newly provided free of charge at the supplier's option, if the defect's cause already existed at the time of transfer of risk.
2. Claims due to defects are time-barred in 12 months. The legal provisions about suspension, suspension of expiration and recommencement of limitation periods remain unaffected.
3. The purchaser shall immediately notify in writing defects to the supplier.
4. In case of notification of a defect, purchaser's payments may be withheld in reasonable proportion to the observed defect. However the purchaser may withhold payments only if there can be no doubt about the justification of the complaint. If a defect was notified wrongly the supplier is entitled to demand damages for expenses from the purchaser.
5. First of all the supplier shall be given opportunity of supplementary performance within reasonable time.

§ 9 Industrial property rights and copyrights; defects of title

1. As far as not agreed otherwise the supplier shall supply free from industrial property rights and copyrights of third parties (hereinafter called "property rights") only in respect of the country of delivery. If a third party due to infringement of an industrial property right or copyright by products furnished by the supplier and used in conformity with the contract, asserts legitimate claims against the purchaser, the supplier shall be liable to the purchaser within the time period provided by § 8 No. 2 as follows:
 - a) At his own choice and expense, the supplier shall - in respect to the concerned supplies - either obtain a right to use, change them in a way not infringing the property right or replace them. If this is not possible to the supplier on acceptable terms, the purchaser is entitled to withdraw from the contract or to reduce the purchase price according to the legal provisions.
 - b) The supplier's liability for claims of damages conforms to § 11.
 - c) Supplier's aforesaid obligations shall exist only on condition that the purchaser immediately notifies the claims asserted by the third party in writing to the supplier, that he does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to the supplier. If the purchaser stops using the supply to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the discontinuation of use does not mean acknowledgment of infringement of a property right.
2. Claims of the purchaser shall be excluded if he is responsible for an infringement of property rights.
3. Claims of the purchaser shall also be excluded if the infringement of a property right was caused by specific demands of the purchaser, by a use of the supply not foreseeable by the supplier or by the supply being modified by the purchaser or being used together with products not provided by the supplier.
4. In cases of infringement of a property right § 8 Nos. 4, 5 and 9 applies accordingly for the purchaser's claims regulated by No. 1 a).
5. In cases of other defects of title § 8 applies accordingly.
6. Further and other claims of the purchaser against the supplier and his auxiliary person due to a defect in title than regulated by this § 9 shall be excluded.

§ 10 Impossibility of performance; adjustment of contract

1. As far as supply is impossible, the purchaser shall be entitled to claim damages, unless the supplier is not responsible for the impossibility. But the purchaser's claim for damages shall be limited to 10% of the value of that part of the supply which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply where in cases of intent, of gross negligence or of injury of life, body or health there is a legally binding liability. No change in the burden of proof to the detriment of the purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected.
2. Where unforeseeable events as described in § 4 para. 2, substantially change the economic importance or the contents of the supply or considerably affect the supplier's business, the contract shall be reasonably adjusted with due regard to the principle of good faith. Where this is not economically reasonable, the supplier shall have the right to terminate the contract. If he wants to make use of this right of termination, he shall immediately notify to the purchaser in writing after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery period had been agreed with the purchaser.

§ 11 Other damages

1. Purchaser's claims for damages and compensation of expenses (hereinafter called "claim for damages"), from whatever legal ground arising, especially due to violation of duty arising under the obligation and delict, shall be excluded.
2. This shall not apply as far as there is a legally binding liability, e. g. under the Product Liability Act, in cases of intent, of gross negligence, of injury of life, body or health, or due to violation of major contractual obligations. However, liability for damages arising from the violation of major contractual obligations shall be limited to the foreseeable damage normally covered by a contract, unless in cases of intent or gross negligence or of liability due to the injury of life, body or health. No change in the burden of proof to the detriment of the purchaser is involved by the aforesaid provision.
3. As far as the purchaser is entitled to claims for damages according to this § 11 his claims for damages are time-barred by the expiry of the limitation period applicable for defects as to quality according to § 8 No. 2. In cases of claims for damages under the Product Liability Act the legal provisions about limitation period shall apply.

§ 12 Place of jurisdiction and applicable law

1. All disputes arising shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these rules and shall be governed by German substantial law.

§ 13 Contract validity

Even in case of legal invalidity of single provisions, the remaining parts of the contract shall remain binding unless adherence to the contract would mean an undue hardship on one of the parties.