

Supply and payment conditions (T&Cs)

1. Scope of the conditions

Our supplies, services and offers are subject exclusively to these supply and payment conditions. These therefore also apply to all future business relationships, even if they are not expressly agreed again. These conditions shall be deemed accepted no later than upon receipt of the goods or service. Counter-provisions of the purchaser with reference to its own business and/or purchasing conditions shall not be recognised, unless we have expressly approved the validity of such provisions in writing. This applies accordingly to our service activities, which concern solely the deployment of requested engineers.

2. Offer and contract conclusion

Our offers are subject to confirmation and non-binding. Declarations of acceptance and of all orders shall be legally valid only upon our acceptance in writing or by fax. The same shall apply for supplements, amendments or ancillary agreements. Documents and information in brochures and print material associated with the offer, e.g. drawings, illustrations, dimensions, weights or other service data are values calculated to the best of our knowledge; such data shall not be binding, however, unless specified in the order confirmations.

3. Price agreements

Our prices apply ex works excluding packaging, plus the respective statutory VAT. Packaging shall be charged at cost price and shall not be taken back. Should the price at the time of service performance increase due to a change in material or labour costs, or due to increase of the third parties involved in the service, the higher price shall apply. If this price exceeds the agreed price by 20% or more, the customer shall have the right to withdraw from the contract. This right must be asserted immediately after notification of the increased price.

4. Delivery

4.1 Our written order confirmation is decisive for the scope of delivery. Ancillary agreements and amendments must be rendered in writing.

4.2 The risk shall be transferred to the customer as soon as the consignment or part-consignment has been passed to the person responsible for shipment or has left our warehouse for shipment. Within the territory of the Federal Republic of Germany our shipments are covered by transport insurance. Packaging shall be charged at cost price and shall not be taken back. In the event of delayed shipment due to circumstances attributable to the customer, the risk shall be transferred to the customer on the day that goods become ready for shipment.

4.3 Delivery dates or periods, which can be agreed as binding or non-binding, must be specified in writing. The delivery period shall commence upon dispatch of the order confirmation, however not before the provision of documents, permissions and approvals to be supplied by the customer, and after receipt of an agreed advance payment. The delivery period shall be deemed fulfilled if the item for delivery has left the factory or has been notified as ready for shipment before such period has expired. Compliance with the delivery period is subject to the fulfilment of contractual obligations by the customer.

4.4 The delivery period shall be extended as appropriate or we shall be entitled to rescind the contract in the event of measures within the context of industrial disputes, particularly strike and lock-out, as well as in the event of unforeseeable obstacles beyond our control, particularly force majeure, insofar as such obstacles have a proven, significant impact on the completion or delivery of the delivery item.

4.5 If our delivery is infeasible for any reason whatsoever, the customer shall be entitled to rescind the contract. The customer can also rescind the contract if part of an order cannot be delivered and the customer has justified grounds to refuse partial delivery. If this is not the case, the customer must pay the contractual price allocated to the partial delivery. The same shall apply in the event of supplier failure. The customer shall have the same rescission rights should we default on delivery, in part or in full, and should we fail to notify the customer of readiness for shipment within a reasonable grace period to be set by the customer. Regulation 5.2 shall apply accordingly to further claims.

5. Liability

5.1 For delivery defects we shall be liable as follows, to the exclusion of further claims:

5.1.1 All parts that prove to be defective due to circumstances that exist prior to the transfer of risk shall be repaired or replaced (right to supplementary performance) at our discretion. Replaced parts shall become our property.

5.1.2 Following consultation with us, the customer shall grant us the necessary time and opportunity to perform all repairs and replacements that we deem necessary; otherwise we shall be relieved of our liability for the consequences. Only in urgent cases where there is a risk to operational safety and/or to avert disproportionate further damage, whereby we must be informed immediately, shall the customer have the right to remedy the defect itself or have the defect remedied by third parties and demand reimbursement of the necessary costs from us (right to self-remedy).

5.1.4 Of the costs arising from the repair and/or replacement, we shall be liable, insofar as the complaint is deemed justified, for the expenses required for supplementary performance, particularly transport, infrastructure, labour and material costs. Should the supplementary performance involve disproportionate costs, we shall reserve the right to refuse the supplementary performance. In individual cases the customer shall be free to offer to reimburse the disproportionate part of the expenses and to insist on supplementary performance.

5.1.5 Within the scope of the statutory provisions, the customer shall have the right to rescind the contract should the supplementary performance fail or should we refuse the supplementary performance due to disproportionate costs. The right to a reduction of the contractual price is expressly excluded. Fig. 5.2 shall apply to claims for damages due to a defect.

5.1.6 Warranty claims shall lapse twelve months after delivery and, unless the claims concern defects that are not apparent even in the course of a proper examination, must be asserted in writing within a limitation period of two weeks after delivery. The limitation period in the case of a delivery regress pursuant to Sections 478, 479 German Civil Code shall remain unaffected. Otherwise we must be notified of defects in writing immediately after discovery.

5.2 Our liability for damages that do not affect the delivery item is as follows:

5.2.1 Our liability for breach of contract as well as tort shall be limited to intent and gross negligence, as well as to the reimbursement of the damages typically incurred. This shall not apply to injury to life, limb and health, or to the breach of cardinal duties, i.e. of duties that arise from the nature of the contract whereby the breach of such duties endangers the realisation of the contractual purpose, as well as to the reimbursement of delay damages (Section 286 German Civil Code). Furthermore, this shall not apply to the fraudulent concealment of defects and/or defects whose absence was guaranteed or to claims under the German Product Liability Act. In these cases we shall be liable for all degrees of fault. However, insofar as the damages do not concern death, injury or impaired health, we shall be liable only for the typical damages incurred and in the case of delivery default, for each complete week of default within the scope of flat-rate compensation for default equivalent to 0.5 % of the delivery value but no more than 5 % of the delivery value. The aforementioned exclusion of liability shall likewise apply to minor negligent breaches of duty by our vicarious agents.

5.2.2 Insofar as external products are used in our products, our liability shall be limited to the assignment of our warranty claims against our supplier to the customer, whereby we shall have a duty to disclose all information that the customer requires to pursue this warranty claim immediately upon receipt of its notification of defects. Any further warranty on our part pursuant to Figure 5.1 of these supply and payment conditions shall exist in these cases only insofar as a legal claim against our suppliers by the customer remains unsuccessful.

5.2.3 No warranty shall be provided for damages resulting from the following: unsuitable or improper use, faulty assembly and/or commissioning by the customer or third party, natural wear, faulty or negligent handling by the customer or third party, inappropriate equipment of the customer, replacement materials, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influence, insofar as they are not attributable to us.

5.2.4 Should the customer or a third party incorrectly repair the faulty goods or should the faulty goods be further processed, modified or combined with external products, the customer shall bear the burden of proof that the defect existed before the delivery item was supplied. We shall assume no liability for the consequences.

5.2.5 Insofar as liability for damages for minor negligence not concerning death, injury or impaired health of the customer is not excluded, such claims shall lapse within one year, commencing with the assertion of the claim or, for compensation claims relating to a defect, from delivery.

6. Payment

6.1 Our invoices shall be due for payment upon receipt and from maturity shall be subject to interest charged at 5 % above the respective base interest rate of the European Central Bank. Subject to waiver of maturity interest, our invoices are payable less 2% discount within eight days of the invoice date and net within 30 days of the invoice date.

6.2 Should the customer default on payment, in part or in full, after lapse of a reasonable payment deadline to be set by us, we shall be entitled to rescind all outstanding contracts with the customer and to demand compensation, irrespective of our claims for the reimbursement of delay damages.

6.3 Should the customer default on payment, fixed reminder costs of 10 euros per reminder, plus any postage expenses, shall be charged.

6.4 Should after contract conclusion we become aware of any circumstances that negatively impact the credit rating of the customer (particularly if the customer has filed an application to open insolvency proceedings on its assets, has submitted a statutory declaration in accordance with Section 807 German Code of Civil Procedure, or insolvency proceedings have been opened or dismissed due to a lack of assets), we shall be entitled to fulfil outstanding deliveries from all contracts with the customer only subject to advance payment or the provision of appropriate collateral. Should the customer fail to satisfy our request for collateral or advance payment within a reasonable deadline, we shall be entitled to rescind all outstanding contracts with the customer.

6.5 Withholding of payment or offsetting on account of any counterclaims of the customer that we dispute are not permitted.

7. Retention of title

7.1 The goods supplied by us, hereinafter referred to as reserved goods, shall remain our property until full settlement of all receivables due from the customer from other supplies and services (even if the specific goods have already been settled), whereby in the event of payment by cheque or bill of exchange, settlement shall occur on the redemption date.

7.2 The processing or restructuring of the reserved goods within the scope of normal business operations shall be permitted, provided that this is performed on our behalf (without obligating us) and that we are the manufacturer pursuant to Section 950 German Civil Code. Processed or restructured goods shall be deemed reserved goods; the rights of the customer shall continue. Insofar as our ownership to the reserved goods lapses due to connection, combination or amalgamation of the reserved goods with other materials, the customer shall grant us co-ownership of the principal goods corresponding to the proportion of the invoice value of the reserved goods to the total value of the principal goods.

7.3 The customer may neither pledge nor collateralise the delivery item. Should third parties seize the reserved goods (particularly in the event of enforcement actions of third parties on the reserved goods), the customer shall indicate our ownership and shall inform us immediately, providing the documentation required for intervention. The customer shall bear the costs of necessary intervention, insofar as the third party is not in the position to reimburse these.

7.4 Should the customer breach its contractual obligations, particularly as regards payment default, we shall be entitled to repossess the goods subject to notice and the customer shall be obliged to return them. Should we assert our retention of title and repossess the delivery item, this shall not be deemed contract rescission unless the consumer loan regulations (Sections 491 et seq. German Civil Code) or the provisions concerning financial assistance between company and consumer (Sections 499 et seq. German Civil Code) apply.

7.5 The customer may sell the reserved goods within the scope of standard business operations, whereby all receivables accrued by customer in this respect shall be assigned to us until full settlement of our receivables from the customer, irrespective of the legal basis. Similarly all insurance receivables accrued by the customer from policies covering the reserved goods shall also be assigned to us. The customer shall herewith assign to us all receivables from further sale or insurance of the reserved goods, including all ancillary rights. Insofar as the customer sells or insures goods or inventory pursuant to Figure 7.2 of these supply and payment conditions, or sells or insures reserved goods together with other goods, the assignment of receivables from further sale or insurance shall not exceed the invoice value of the reserved goods.

7.6 The customer shall be entitled to collect receivables from sale assigned to us pursuant to Figure 7.5 of these supply and payment conditions in its own name. We can revoke this collection authorisation if the customer defaults on the fulfilment of its obligations, in part or in full, from this or another contract; if insolvency proceedings are filed or opened concerning its assets; if the customer is insolvent, breaches its contractual obligations or otherwise endangers our collateral interest.

7.7 Should the value of the existing collateral exceed the total value of the receivables from the customer by more than 10%, we shall be obligated to release collateral at our discretion and at the request of the customer.

7.8 Should the customer grant extended credit to its own customers or defer the purchase price, it must retain title to the sold goods vis-à-vis its customers under the same terms and within the same scope as stipulated by us at the time of supplying the reserved goods to the customer.

8. Limitation of payment claims

Notwithstanding Section 195 German Civil Code, our payment claims shall be limited to five years. Section 199 shall apply as regards the start of the limitation period.

9. Cancellation

Should the customer rescind the contract without legal cause or should it refuse to fulfil the contract, we shall be entitled to rescind the contract ourselves and, irrespective of the option to substantiate higher damages on a case-by-case basis, we shall be entitled to demand compensation due to non-fulfilment equivalent to 100% of the invoice sum, less saved expenses, and taking into account payments already received from the customer.

10. Non-disclosure

All documents (excluding promotional material) that we make accessible to the customer within the scope of business relations, particularly design drawings, experience reports, procedure descriptions and material analyses, are confidential and may not be reproduced or disclosed to third parties, either directly or indirectly, without our consent. We shall reserve intellectual property rights and copyright to these documents.

11. Choice of law, place of fulfilment and place of jurisdiction

The law of the Federal Republic of Germany shall apply exclusively to these supply and payment conditions and to all legal relationships between us and the customer. Place of fulfilment and payment is 85662 Hohenbrunn / Oberbayern. If the customer is a merchant, a legal person under public law or a special fund under public law in accordance with German Civil Code, Munich shall be the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.

12. Severability clause

Should a provision of these supply and payment conditions or a provision of other agreements be or become ineffective, the efficacy of all other provisions or agreements shall remain hereby unaffected.

13. Data protection legislation

In accordance with Section 23 German Data Protection Act, we shall store the data of the customer solely within the context of the order process and the statutory retention obligations. We hereby deem the customer to be in agreement.