

**I. General**

- The scope of deliveries and/or services (hereinafter referred to as „Supplies“) shall be determined by the written declarations of both Parties. General terms and conditions of the Purchaser shall apply only if and when expressly accepted by the supplier or the provider of services (hereinafter referred to as „Supplier“) in writing.
- The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as „Documents“). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier may rightfully transfer Supplies.
- The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy without express agreement.
- Partial Supplies shall be allowed, unless they are unreasonable to accept for the Purchaser.
- Offers submitted by the supplier are non-binding and made without obligation; the supplier reserves the right to make prior sale. Purchase orders/listings and agreements made by the supplier's commercial agents shall only be legally binding if confirmed in writing by the supplier. Oral agreements and specific understandings pertaining to binding force shall likewise only be valid if confirmed in writing by the supplier.
- Information pertaining to dimensions and weights quoted by the supplier, as well as illustrations, drawings, and measurements and weights quoted in catalogues, price lists, offers or the like, refer merely to approximate values which comply with customary industry practice and are therefore not binding, unless these are explicitly designated as binding in the acknowledgement of order.

**II. Prices and terms of payment**

- Our prices calculations are based on the following plus the valid legal added tax:
  - For deliveries within Germany:
    - valued at EUR 1000: FOB destination
    - valued at less than EUR 1000: freight collect, net ex warehouse
  - For deliveries outside of Germany:
    - ex works Arnsberg, iaw Incoterms 2000.

- In case of changes to material, labor or energy costs, as well as those resulting from business hour restrictions, both partners are entitled to request a commensurate price adjustment in consideration of these factors.
- If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.
- Payments shall be made free Supplier's paying office.
- The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.

**III. Reservation of ownership**

The following, simple and extended reservation of ownership shall be agreed:

- The goods (retained goods) delivered shall remain the property of the supplier pending satisfaction of all claims (including all balance claims from open accounts) held by the supplier now or in the future against the ordering party. Should the ordering party commit a breach of contract, e.g. by defaulting on payment, the supplier shall, after stipulating a reasonable period of grace, be entitled to repossess the goods. Repossession of the retained goods by the supplier shall constitute withdrawal from the contract. Seizure of the retained goods by the supplier shall constitute withdrawal from the contract. The supplier shall be entitled to realize the retained goods upon repossession. After deduction of a reasonable amount to cover the costs of realization, the amount owed by the ordering party shall be offset from the realization proceeds.
- The ordering party shall treat the retained goods with due care and shall, at its own cost, provide appropriate value as new insurance cover for the same against damages arising from fire, water, and theft. Any maintenance and inspection work which is required shall be performed in good time by the purchaser at its own cost.
- The ordering party shall be entitled to sell the retained goods in the course of ordinary business activities and/or to use the same provided the ordering party is not in default with payments. The goods shall not be pledged or ownership to the same be transferred by way of security. Receivables arising from resale or for any other legal reasons (insurance, tortious acts) in relation to the retained goods (including all balance claims from open accounts) shall be hereby assigned to us in full by the ordering party as security; the supplier hereby accepts such assignment. Subject to revocation, the supplier authorises the ordering party, for its own account and in its own name, to collect receivables assigned to the supplier. This authorization to collect can be revoked at any time should the purchaser fail to fulfil its payment obligations or in the event of any other good cause, in particular if the purchaser defaults on payment or suspends payments, if insolvency proceedings are instituted, bills are protested, or in the event of comparable substantiated grounds for the presumed insolvency of the ordering party. Neither shall the ordering party be entitled to sell these receivables to a factor for collection purposes unless an obligation is simultaneously imposed on the factor to effect payment of consideration equal to the amount of the receivables directly to the supplier pending settlement of all accounts receivable by us from the ordering party.
- In all cases retained goods shall only be processed or transformed by the ordering party on behalf of the supplier. Should the retained goods be worked into other objects which are not the property of the supplier, the supplier shall acquire proportionate co-title to the new object based on the ratio of the value of the retained goods (final invoice amount including value-added tax) to the other objects so processed at the time such processing takes place. The provisions applying to the retained goods shall likewise apply to the new object resulting from such processing. Should the retained goods be inseparably mixed with other objects which are not the property of the supplier, the supplier shall acquire proportionate co-title to the new object based on the ratio of the value of the retained goods (final invoice amount including value-added tax) to the other objects so mixed at the time such mixing takes place. Should objects be joined in such a way that the property of the ordering party is regarded as the principal good, the parties agree that the ordering party shall transfer proportionate co-title to this object to the supplier; the supplier hereby accepts such transfer. The resulting exclusive or jointly-held property of the supplier shall be stored by the ordering party on behalf of the supplier.
- Should third parties seize or assert any other claims to the retained goods, the ordering party shall inform such third parties that the relevant goods are the property of the supplier and notify the supplier of the same immediately to enable the latter to assert its property rights. Should the third party not be in a position to reimburse the judicial or extra-judicial costs incurred in this context to the supplier, the ordering party shall be liable for such costs.
- The supplier shall release collateral security due to it should the realizable value of such collateral exceed the value of the secured receivables by more than 10%; in this context the supplier may select the collateral security it wishes to release at its own discretion.

**IV. Time for supplies; delay**

- Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where the Supplier is responsible for the delay.
- If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly.
- If the Supplier is responsible for the delay (hereinafter referred to as „Delay“) and the Purchaser demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the Delay could not be put to the intended use.
- Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Purchaser based on statute shall be limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
- At the Supplier's request the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.
- If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

**V. Transfer of risk**

- Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - if the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Purchaser, the Supplier shall insure the Supplies against the usual risks of transport at the expense of the Purchaser;
  - if the Supplies include assembly or erection, at the day of taking over in the own works or, if so agreed, after a fault-free trial run.
- The risk shall pass to the Purchaser if dispatch, shipping, the start or performance of assembly or erection, the taking over in the own works or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

**VI. Receiving of supplies**

The Purchaser shall not refuse to receive Supplies due to minor defects.

**VII. Return of goods**

- The return of non-defective goods is based on goodwill of the supplier and requires the prior written consent ahead. Otherwise, acceptance of them may be refused.
- For the return of faultless goods the supplier issues an adequate credit note of the goods value. In addition, the customer has to bear all freight charges as well as expenses of packaging and repairs, where required.
- Modifications, variants of catalogue products, system solutions and project-related special productions are excluded from return.

**VIII. Defects as to quality**

The Supplier shall be liable for defects as to quality („Sachmängel“, hereinafter referred to as „Defects“,) as follows:

- All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
- Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code („BGB“), as well as in cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration („Ablaufhemmung“), suspension („Hemmung“) and recommencement of limitation periods remain unaffected.
- The Purchaser shall notify Defects to the Supplier in writing and without undue delay.
- In the case of notification of a Defect, the Purchaser may withhold payments to a reasonable extent taking into account the Defect occurred. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle the Supplier to have its expenses reimbursed by the Purchaser.
- The Supplier shall first be given the opportunity to supplement its performance („Nacherfüllung“) within a reasonable period of time.
- If supplementary performance is unsuccessful, the Purchaser shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Art. XI.
- There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
- The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies was subsequently brought to another location than the Purchaser's branch office, unless doing so complies with the intended use of the Supplies.
- The Purchaser's right of recourse against the Supplier pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against the Supplier pursuant to Sec. 478 para. 2 BGB.
- Furthermore, the provisions of Art. XI (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. VIII, based on a Defect, shall be excluded.

**IX. Industrial property rights and copyright; defects in title**

- Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as „IPR“) with respect to the county of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Art. VIII No. 2 as follows:
  - The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from the Supplier, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
  - The Supplier's liability to pay damages shall be governed by Art. XI.
  - The above obligations of the Supplier shall only apply if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
- Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by the Supplier or to the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
- In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Art. VIII Nos. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
- Where other defects in title occur, Art. VIII shall apply mutatis mutandis.
- Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. IX, based on a defect in title, shall be excluded.

**X. Impossibility of performance; adaption of contact**

- To the extent that Supplies are impossible to be carried out, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to cancel the contract shall remain unaffected.
- Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, the Supplier shall have the right to cancel the contract. If the Supplier intends to exercise its right to cancel the contract, it shall notify the Purchaser thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

**XI. Other claims for damages**

- Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as „Claims for Damages“), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
- The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act („Produkthaftungsgesetz“), in the case of intent, gross negligence, injury of life, body or health, or breach of a condition which goes to the root of the contract („wesentliche Vertragspflichten“). However, Claims for Damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
- To the extent that the Purchaser has a valid Claim for Damages according to this Art. XI, it shall be timebarred upon expiration of the limitation period applicable to Defects pursuant to Art. VIII No. 2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

**XII. Venue and Applicable law**

- If the Purchaser is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the Purchaser's place of business.
- Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**XIII. Severability clause**

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.

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