

Conditions of Delivery and Payment

I. General

For all deliveries and payments by the supplier, regardless of which type, the conditions below shall apply exclusively. In order to become valid, additions or amendments to the conditions must be in writing and verbal agreements and commitments, regardless of which type and by whom they take place, shall require written confirmation. The ordering party's conditions of purchase shall not be acknowledged.

Written or verbal notifications by the ordering party shall be addressed directly to the registered office of the supplier or service provider. Representatives shall not be authorised to receive or issue any binding declarations to the supplier. Partial invalidity of the conditions shall not affect the validity of the remaining parts.

II. Offer

All offers by the supplier shall be subject to confirmation; bindingly assured fixed prices shall be valid for a period of 6 weeks, calculated from the date of the offer. The acceptance of an offer shall require a written confirmation in order to be deemed valid.

The documentation included with the offers, such as cost estimates, drawings, size and performance details, shall remain the supplier's property. These may not be disclosed to third parties without the supplier's written consent.

The details provided in the offer and the related documents regarding dimensions, weights and performance are technical guideline values and shall not be deemed guaranteed characteristics. A modification in accordance with the technical requirements and progress shall be possible at any time.

No obligation shall exist to review drawings and other details sent in by the ordering party with regard to their correctness and suitability. In case of loss – regardless of the reason – a compensation claim by the ordering party shall be excluded.

III. Prices and payment

The price agreed on the basis of the order confirmation shall be based on the respective material costs and wages. If these should change by the time the order is delivered, the specified sales price can also be subject to a relevant percentage change, whereby the respective status of the order's completion shall be taken into consideration if costs increase occur. If a fixed price has been agreed, this shall remain unaffected. The specified prices shall be subject to the applicable VAT. Payments shall take place in cash, without any deductions, excluding offsetting and retention.

If the payment deadlines should be exceeded, the supplier shall be entitled to charge credit interest of 5% over the respective valid bank discount rate, without providing specific evidence. The assertion of further default losses shall remain reserved.

Promissory notes and cheques shall only be accepted in lieu of payment. Costs arising from this shall be settled in cash immediately, no later than within one week after notification.

Promissory note and credit transactions shall take place subject to acceptance by the financing company and/or credit insurance. In case of payment default or initiation of settlement proceedings both in and out of court or bankruptcy, all deferred debts shall immediately fall due for payment, waiving any discounts or other rebates granted.

IV. Delivery

The specified delivery times shall be met, as far as possible. However, they shall only apply subject to the usual reservations and shall not bind the supplier.

The non-binding delivery dates shall begin with sending the order confirmation and/or after clarification of all technical and commercial details. If a fixed date should be specified in the order confirmation, this shall be postponed analogously. Unforeseeable events, such as force majeure, strike, lockouts, non-timely self-supply of raw materials or sub-contracted supply shall entitle the supplier, at his option, to postpone delivery or withdraw from the contract. In these cases, with late delivery – regardless of the reason, whether culpable or non-culpable – and in case of withdrawal from the contract, any compensation claims by the ordering party shall be excluded.

If the shipment should be delayed at the ordering party's request, he shall be charged with the resulting costs of storage, beginning with the month after notification of readiness for shipment. In case of storage in the supplier's factory, these shall amount to 0.5% of the invoice amount for each initiated month. Instead of this, the supplier shall be entitled to dispose otherwise of the delivery object, after the expiry of a period to be set by him, and to invoice the ordering party for the resulting extra costs incurred and a possible reduced profit.

V. Transfer of risk and acceptance

When the delivery items have left the factory premises of the manufacturer's plant, the risk shall transfer to the ordering party, even if partial deliveries take place or the supplier has also assumed other services, e.g. shipping costs or delivery and setup. At the request of the ordering party, the shipment shall be insured by the supplier against breakage, fire and water damage, at his expense.

The transport insurance shall initially be covered by the supplier and invoiced separately at the cost price.

Delivered items shall be accepted by the ordering party, even if they display insignificant defects. Partial deliveries are admissible.

If the shipment should be delayed as a result of circumstances for which the supplier is not responsible or at the request of the ordering party, the risk of loss or deterioration shall transfer to the ordering party at the time of readiness for shipping. At the express wish of the ordering party, the supplier shall be obligated to conclude insurance policies at the ordering party's expense.

VI. Reservation of title

The deliveries shall take place subject to reservation of title.

1. Until full payment of all claims created, or to be created in the future, from the legal relationship between the supplier and the ordering party, the delivery object shall remain the property of the supplier.
2. Acquisition of ownership of the goods subject to retention of title, pursuant to Article 950 BGB [German Civil Code], through processing or transformation, shall be excluded. The ordering party shall notify the processor of this.
3. In case of combining or mixing the goods subject to retention of title (Articles 948, 947 BGB [German Civil Code]) the supplier shall be entitled to co-ownership of the new item in the proportion of the invoice value of the combined or mixed, movable items, whereby the new item shall also be deemed subject to retention of title. The ordering party shall be obligated to notify the supplier of the other items regarding the reservation of title.
4. In case of onward sale of the goods subject to retention of title, the ordering party shall undertake to disclose the reservation of title to the buyer and only transfer the expectancy rights or the item to the buyer, subject to the consent of the supplier.
5. The ordering party shall now assign to the supplier, the claim arising from the onward sale of the goods subject to retention of title, in respect of the invoice amounts for the delivery objects. The ordering party shall be authorised to collect the claim, as long as he duly fulfils his payment obligations.
6. The ordering party shall undertake to immediately notify the supplier of pledges or other impairments of the delivery object, as well as restrictions to the supplier's rights by third parties.
7. The supplier shall be entitled to demand the release of goods subject to retention of title, if the buyer does not fulfil his payment obligations. The assertion of the reservation of title, as well as the pledging and realisation of the delivery object by the supplier shall not be deemed withdrawal from the contract.
8. The ordering party shall undertake not to arrange an assignment prohibition with his buyers and shall waive the assertion of a relevant objection.

VII. Liability

The supplier shall only assume a guarantee for defects to his products for manufacturing or material defects that are proven to be his responsibility. A requirement for this is proper storage prior to commissioning and precise compliance with the supplier's installation and operating instructions.

Defects that have been determined shall be immediately notified to the supplier in writing, however, no later than within 8 days after receipt of the delivery object. Transport damage must be asserted by the buyer in writing within 24 hours of arriving with the buyer.

Liability by the supplier shall specifically be waived if unsuitable working materials (heating oil or heating gas)/unsuitable thermal transfer liquids (thermal oil or insufficiently processed water) are used. The heat carrier manufacturer shall decide on the suitability of the heat carrier, the processing of the water shall be taken from the boiler manufacturer's operating instructions. The operator shall be responsible for a faultless power supply. The liability shall not extend to losses resulting from natural wear and tear (particularly refractory materials), excess stress, mechanical, chemical, electrochemical, electric or physical influences. In case of deficient maintenance of the delivered apparatus and/or their setup and installation by the buyer or third parties, which is not due to culpability by the supplier, the guarantee shall lapse.

The liability by the supplier for delivery defects, which also include the lack of explicitly assured characteristics, shall be limited as follows, to the exclusion of further compensation claims:

All parts shall be improved or newly delivered, at the option of the supplier, which are verifiably unusable or their usability is significantly impaired, within 6 months after commissioning (with multi-shift operation, within 3 months) as a result of a circumstance prior to the transfer of risk, particularly due to defective design, poor working materials or defective realisation.

With the delivery of third-party products, the supplier's liability shall be limited to the assignment of guarantee claims, to which he is entitled vis-à-vis his upstream suppliers.

The repair of defective or damaged parts shall only take place by the supplier/the manufacturing plant specified by him. Third-party repair costs shall not be compensated by the supplier without his prior consent. Sending in of parts for repair shall take place postage paid. The return shipment shall take place carriage forward. The items must be sent in using the supplier's original packaging, with notification of the loss of guarantee claims.

Guarantee claims can only be asserted by the original ordering party. The supplier's installation engineers shall not be entitled to acknowledge guarantee claims. Any further claims by the ordering party, in addition to those listed above, particularly for change, reduction and replacement of direct and/or indirect losses (consequential losses) shall be excluded. The guarantee provisions listed in this paragraph shall only apply to the Federal Republic of Germany.

VIII. Legal venue

The legal venue for all disputes arising from and in relation to the conditions and the contractual relationship shall be Norderstedt, or at the supplier's option, a general or specific legal venue of the ordering party. German law shall apply to the contractual relationship and all legal relationships arising from this.