

I. General Provisions

The following written provisions, mutually agreed-on, apply to the scope of services or delivery (henceforth "Delivery"). Purchaser's general terms and conditions apply only to those to which the service provider or supplier (henceforth: "Supplier") has explicitly consented in writing.

II. Prices and Terms of Payment

1. Prices are to be regarded ex works, packing fees and applicable legal VAT not included.
2. Purchaser is entitled to set off claims which are uncontested or legally valid.

III. Retained Goods

1. The goods of shipment (Retained Goods) shall remain property of Supplier until all claims are settled which per terms and conditions are due from Purchaser. Inasmuch as the value of all security interests which are due to Supplier exceed the amount of all secured claims by more than 20%, Supplier shall release a respective part of the security interests upon Purchaser's request.
2. In the event that the Retained Goods are linked to other goods, then Supplier shall hold property rights to the respective portion of the new goods. Upon Purchaser's sole ownership of the new good, Purchaser shall transfer co-ownership to Supplier. Purchaser shall preserve the sole and co-ownership for Supplier.
3. During the existence of Retained Goods, Purchaser shall not be entitled to assign the goods and shall only be permitted to sell them to resellers in compliance with customary business practice and under the provision that reseller shall receive payment from its customers or that transfer of title shall only take place when the respective customer has complied with his payment obligations. Purchaser's claims to resale of Retained Goods shall herewith already be assigned to Supplier. Purchaser shall be entitled to collect the assigned claims as long as he shall fulfil his payment obligations to Supplier. Upon Purchaser's default Supplier shall be entitled to revoke the right to collection. In such event and upon Supplier's demand, Purchaser shall be obligated to make all necessary declarations and to permit to Supplier the examination of the existing assigned claims in his accounting department by a representative as well as to inform the debtors of the assignment.
4. Purchaser is obligated to inform Supplier immediately of any foreclosure, garnishment or other injunctions or infringements by a third-party.
5. Any negligence on the part of Purchaser, especially in the event of default, Supplier shall be entitled to rescission and/or taking-back after giving Purchaser a reasonable period to comply; the statutory cases where the time limit may be waived are not affected. Purchaser is obligated to return the goods.
6. The assertion on Retained Goods, cancellation as well as seizure of delivered goods by Supplier shall not constitute rescission from the contract, unless such rescission shall be stated explicitly. In case of a cancellation, Supplier shall be entitled to dispose the goods freely to best use, after prior announcement and setting of an appropriate deadline.

IV. Delivery Deadlines; Delays

1. The compliance with delivery deadlines is conditional on the timely receipt of all documents to be submitted by Purchaser, necessary permits and releases, especially regarding plans, as well as the compliance with provisions of payment agreed on and other obligations by Purchaser. In the event that these prerequisites are not met on time, then the deadlines shall be extended accordingly; this does not apply if the delay is caused by Supplier. Partial deliveries are permissible if Purchaser can be reasonably expected to accept.
2. In the event that non-compliance with deadlines is caused by force majeure, i.e. mobilization, war, uproar or similar events, i.e. strikes, lockouts, the deadlines shall be extended accordingly.
3. In the event that Supplier is in delay and Purchaser can prove that such has caused damages, Purchaser shall be entitled to an indemnification of 0.5% of the price for each full week of delay, however, not exceeding 5% of the price for the part of the shipment which was not able to be operated effectively due to the delay. The respective amount shall be credited to any possible claims for damages per Section VI. Any further claims aside from the provisions set forth in Section VI are excluded.
4. Purchaser shall be entitled to rescind from the contract or to demand damages per Section VI for the respective delayed delivery, if Supplier is delayed and an appropriate grace period under warning of non-performance granted by Purchaser has not been met.
5. Upon request by Supplier, Purchaser is obligated to declare within a reasonable period of time if he wishes to rescind from the contract due to the shipment delay or if he insists on delivery.
6. In the event that shipment and delivery as requested by Purchaser are delayed by more than one month after giving notice of being ready for shipment, Purchaser may be charged a storage fee in the amount of 0.5% of the price of goods of shipment, however not more than a total of 5%. Proof of higher or lower storage fees remains free to contract parties.
7. Purchaser shall not be entitled to refuse delivery of shipment due to irrelevant defects.

V. Liability for Defects

Supplier shall be liable for defects as follows:

1. Upon receipt of the delivered goods, Purchaser is obligated to inspect them for any defects and warranted condition. Any apparent defects of the shipment are to be reported to Supplier in writing immediately upon delivery, any hidden defects immediately upon discovery. Otherwise, shipment shall constitute as approved.
2. In case of defects, payments may be withheld by Purchaser in a scope relevant to the respective defects. Purchaser is only entitled to withhold payment for obvious defects. If the defects turn out to be unjustified, Supplier is entitled to demand reimbursement from Purchaser for any expenses incurred.
3. Purchaser shall grant Supplier the opportunity to review the claims, especially to provide to Supplier the damaged goods and their packaging for inspection. If Purchaser refuses this, then Supplier shall be held harmless for any defects. Only in urgent cases when the security of the operation is in danger and for the avoidance of greater damages, or if Supplier is in delay with the removal of the defect, Purchaser shall be entitled to remove the defect or have it removed by a third party and to claim damages from Supplier, whereby Supplier shall be notified immediately.
4. Goods showing defects shall be repaired or replaced by Supplier within a reasonable period of time set by Purchaser. Replaced goods shall be property of the Supplier and be returned to him. In the event that repair or replacement shall not be possible, or does not take place or is unsuccessful within a deadline set by Supplier, Purchaser shall be entitled to either rescind from the contract due to the goods showing defect or alternatively reduce the purchase price.
5. Any costs arising from the repair or replacement shall be borne by Supplier – provided that the claims are substantiated – the costs for the replacement including shipment and the respective removal and installation costs. Any additional costs at Purchaser shall be borne by him. This also applies to the higher expenses of Purchaser or Supplier which arise because the goods were subsequently shipped to another place than the plant of the Purchaser, unless the shipment represents its intended use.
6. Claims for damages do not apply in case of minimal discrepancies from the agreed condition, irrelevant limitation of use, normal wear and tear or defects which arise after transition of danger due to wrongful or negligent treatment, excessive use, inadequate operating materials, deficient construction, inappropriate subsoil, or which arise from other outside influences which are not provided for in the contract, as well as due to software defects which cannot be reproduced. If Purchaser or any third party shall perform any improper changes or maintenance, then no claims for damages shall apply for them nor for any thereby resulting consequences.
7. Claims by Purchaser under a right of recourse against Supplier per Section 478 of the German civil code (recourse of the entrepreneur) shall only apply insofar as Purchaser has not reached any other agreements outside the statutory claims for damages. As to the scope of the recourse claims by Purchaser against Supplier per Section 478, Paragraph 2 of the German civil code, section V.6 shall apply additionally.
8. With regards to other claims for damages, Section VI (Other Claims for Damages) shall apply. Any additional or other claims for damages by Purchaser than those agreed in Section V against Supplier and his vicarious agents are excluded.
9. Section VI contains all claims for damages by Purchaser, including any possible claims for damages which become statute-barred one year after delivery to Purchaser. Replacements and repairs have a statutory period of 1 year, however at least until expiration of the original statutory period for the goods of shipment. The period for the liability of defects for the goods of shipment shall be extended by the period of the interruption caused by the repair. In the event of personal injury to body or health, willful or gross negligence by Supplier and in case of fraudulent concealment of a defect the statutory periods of limitation shall apply.

VI. Other Claims for Damages

1. Any claims for damages and expenditures by Purchaser (henceforth: "Claims for Damages"), no matter on what legal basis, especially due to a breach of obligations from contracts and tortuous acts are excluded.
2. This does not apply if liable by law, e.g. per the law regulating product liability, in cases of willful acts, gross negligence, personal injury to body and health, breach of material contract obligations. The liability for damages is limited, however, as per conventional terms in a contract, unless there is no liability for willful or gross negligence and personal injury of body and health. The above provisions do not constitute a change to the burden of proof at Purchaser's expense.
3. Inasmuch as Purchaser is entitled to claims for damages per this section VI, they shall become time-barred upon termination of the applicable period of limitation per Section V.9. Any claims for damages according to the laws regulating product liability the statutory periods of limitation apply.

VII. Place of venue; applicable law, severability clause

1. Sole place of venue for all disputes resulting directly or indirectly from the contractual relationship shall be at the seat of Supplier, in the event that the Purchaser is a salesman. Supplier, however, is also entitled to file a law suit at the seat of Purchaser.
2. German material law shall apply to the legal provisions set forth in this contract, excluding the agreement of the United Nations regarding the purchase of goods (CISG).
3. The contract shall also remain effective if one of the provisions becomes ineffective. This also shall apply if adherence to the contract would constitute intolerable hardship for one of the parties.