



Terms and Conditions of Sales and Delivery

I. General

1. All deliveries and services shall be based on these terms and conditions as well as on any separate contractual agreements. Deviating terms and conditions of purchase on the part of the Purchaser shall not form part of the contract, even as a result of acceptance of an order. A contract shall be formed – in the absence of a separate agreement – through written confirmation of the order by the Supplier.
2. The Supplier shall retain the title to and the copyrights of all samples, cost estimates, proposals, drawings or any other written, electronic, oral or other information; no such information shall be released or divulged by the Purchaser to any other person whatsoever. The Supplier agrees not to release to any third party any information that is received from Purchaser and marked as confidential, unless the Supplier has received the Purchaser's consent.

II. Prices

1. Our prices are to be understood ex factory Bremen, excluding packaging costs for transportation and net of the applicable statutory VAT. All prices for our products do not include any kind of work for installation.
2. In the absence of any separate agreement, we reserve the right to invoice the prices generally valid on the day of delivery. In particular, we reserve the right to adjust our prices whenever our production costs have increased between order and delivery.

III. Payment

Unless confirmed otherwise in writing for an individual case, the following shall apply:

Payment shall be made net within 30 days of the date of invoice. In the event of overdue payment, we are entitled to demand payment of interest on the amount outstanding at a rate of 5% above the prevailing discount rate of the German Central Bank.

Payments received will be offset against the oldest amounts still outstanding. Bills of exchange will only be accepted by way of exception and by prior agreement. The acceptance of any bills or cheques is subject to the condition that we shall be able to demand payment in cash at any time against return of the bills or cheques. Before all due sums have been settled in their entirety, we shall not be under an obligation to make any further deliveries. If events occur in connection with the Purchaser that make his creditworthiness appear questionable, or if there were already such doubts at the time the order was placed but we only became aware of them later, we shall be entitled to demand immediate advance payment or security. If the Purchaser does not meet this request within a reasonable period of notice to be set by us, we shall then be entitled to rescind the contract and to demand compensation for damages.

IV. Delivery Period, Delay in Delivery

1. The delivery period shall be given in the agreements made between the contracting parties. The Supplier shall not be obligated to effect delivery by the specified time unless all commercial and technical issues have been agreed upon between the contracting parties, and unless the Purchaser has fulfilled all the pertinent obligations, such as the submission of any governmental permits, approvals or the like, and the payment of any deposit. If these conditions are not met, the delivery period shall be extended by a reasonable period. This shall not apply insofar as the Supplier is answerable for the delay.
2. The Supplier is entitled to make partial deliveries.
3. Compliance with the delivery deadline shall be subject to correct and timely delivery of the Supplier by his subcontractors.
4. The delivery deadline shall be regarded as having been met if the product (i.e. the item to be delivered) has left the Supplier's works by the time the deadline expires, or has been reported as being ready for dispatch. If acceptance by the Purchaser is required, then – unless the acceptance was refused on justified grounds – the product shall be deemed to have been delivered on the date of acceptance or, failing that, the date on which the product was reported as being ready for acceptance.
5. If the shipment or the acceptance of any product is delayed for any reason for which the Purchaser may be answerable, then any costs incurred because of such a delay shall be charged to the Purchaser as from a date one calendar month after the date on which the readiness for dispatch or acceptance was notified.
6. If the delivery period cannot be met due to force majeure, labour disputes or any other events beyond the control of the Supplier, the delivery time shall be extended by a reasonable period. The Supplier shall give the Purchaser reasonably prompt notice of the beginning and the end of any such circumstances.
7. The Purchaser shall have the right to rescind the contract without notice if it becomes finally impossible for the Supplier to perform the entire contract prior to the passage of risk. Furthermore, the Purchaser shall have the right to rescind the contract if the delivery of any part of the purchase order becomes impossible and the Purchaser has good cause to refuse to accept the partial delivery. If no such good cause exists, the Purchaser shall pay the part of the contract price that is commensurate with the partial delivery. The same shall apply if the Supplier is unable to perform. In all other cases, Article VII clause 2 shall apply. If the circumstances making performance impossible or rendering the Supplier unable to fully perform the contract occur while acceptance is delayed, or if the Purchaser is solely or largely responsible for such circumstances, the Purchaser shall remain obligated to provide fair consideration.

V. Retention of Title

1. All products delivered by us shall remain our property until final payment of all outstanding debts incurred during the business relationship, even if debts are only incurred after delivery. This shall also apply when payment is made for specific deliveries.
2. In the case of an open account, the retained property shall act as security for our corresponding balance claim. The Purchaser is entitled to resell the retained goods within the course of a proper business transaction; however, he may not assign these or use them as security. A proper business transaction is not given if, in the event of sales by the Purchaser or other dispositions, an assignability of his claims on third parties is thereby excluded. In the event of delivery to third parties or further processing of our retained property, any claims of the Purchaser including all subsidiary rights are assigned to us immediately on conclusion of the pertinent contract. The assignment shall be applied to the amount of the sum invoiced for our deliveries plus a surcharge of 25%. Despite an assignment of title, we shall remain entitled to enforce our claims on the Purchaser. Apart from that, the Purchaser is obligated to inform the Supplier promptly on all dispositions relating to the retained goods.
3. Further reworking or processing of the retained property shall always be carried out by the Purchaser in the name of the Supplier. When the retained items are processed together with other products not under our ownership, we thereby attain a commensurate share of ownership in the new product at the time of its processing. Apart from that, the same conditions shall apply for the property originating through such processing cases as for goods delivered under retention of title.
4. If the retained property is inseparably mixed with other items not belonging to us, we shall attain joint ownership in the new property commensurate with the value of the goods in relation to the other mixed items at the time of mixing, such that the property of the Purchaser is to be regarded as the principal item and it shall be taken as agreed that the Purchaser transfers pro rata ownership to us. The Purchaser shall hold the resulting right to sole ownership or joint ownership in custody for us.
5. If the Purchaser acts in violation of the contract, and in particular if he defaults on payment, the Supplier shall be authorized to take back the product and the Purchaser shall be obliged to surrender it. Assertion of a retention of title as well as attachment of the product by the Supplier shall not be regarded as a rescission of the contract. The application to instigate insolvency proceedings shall also entitle the Supplier to rescind the contract and demand immediate return of the product.

VI. Warranty

With the exclusion of further claims, subject to Article VII, the Supplier shall provide the following warranties with regard to defects of quality and title:

Defects of Quality

1. Any part of the delivery which is found to be defective due to any circumstances prior to the passage of risk shall, at the discretion of the Supplier, be repaired or replaced. Prompt notice of any such defects shall be given by the Purchaser to the Supplier in writing. The title to any parts so replaced by the Supplier shall be transferred to or remain vested in the Supplier.
2. The Purchaser shall provide the Supplier with reasonable time and opportunity, as agreed with the Supplier, to repair any defect or to replace any defective part as the Supplier may deem fit, otherwise the Supplier shall not be held liable for any losses suffered if no such reasonable time and opportunity is provided. The Purchaser shall have the right to remove any such defect himself or to have any such defect removed by any third party and shall be entitled to the reimbursement of any reasonable expenses incurred thereby, but only if such removal by the Purchaser or third party is urgently required for safety reasons or to prevent substantial loss; in such a case, the Purchaser shall notify the Supplier promptly.
3. Out of all costs occasioned by such repair or replacement under this Article VI, the Supplier shall – insofar as the warranty claim is justified – bear the costs of any spare parts including the costs of shipment thereof as well as reasonable costs for the removal and installation work and, if justified in the circumstances of the case, the costs of providing fitters and/or labour for such work.
4. Subject to the exemptions provided for by law, the Purchaser shall have the right to rescind the contract, in accordance with the provisions of law, if the Supplier fails to rectify any defect for which the Supplier may be liable by repair or replacement within a reasonable period of time fixed by the Purchaser. If any such defect is minor, the Purchaser shall only be entitled to a reasonable reduction in the contract price, whereby the Purchaser shall not be entitled to a price reduction for any other reasons.
5. In particular, no warranty shall be provided in the following cases:
Improper or inexperienced use of the product; defective installation or commissioning by the Purchaser or any third party; normal wear and tear; wrong or careless handling; improper maintenance; use of unsuitable consumables; substandard civil engineering work; unsuitable subsoil or foundations; chemical, electrochemical or electrical influences – unless attributable to the Supplier.
6. If the Purchaser or any third party repairs the product incorrectly, any liability of the Supplier for such repair or any effects thereof shall be excluded.

The same shall apply to any modifications to the product made without the prior consent of the Supplier.

Defects of Title

1. If the use of the product constitutes a breach of any copyright or other proprietary right within Germany, then the Supplier shall at his own cost obtain from the owner of the proprietary right the right for the Purchaser to continue to use the product, or shall modify the product in a reasonably acceptable manner for the Purchaser in order to eliminate said breach.
If this remedial action is not possible at reasonable cost to the Supplier or within a reasonable period of time, then the Purchaser shall have the right to rescind the contract. Under the said prerequisites, the Supplier shall also have the right to rescind the contract.

Furthermore, the Supplier shall indemnify the Purchaser against any undisputed title of, or any title enforced in court by, the relevant owner of the proprietary right.

Subject to the provisions of Article VII clause 2 herein, the Purchaser shall be entitled to no relief from the Supplier for any breach of any proprietary right other than the relief provided for in Article VI clause 7 and any such relief shall be subject to

- the Purchaser notifying the Supplier promptly of any alleged breach of copyright or proprietary rights;
- the Purchaser providing reasonable support to the Supplier for the defence against any asserted claims or providing the Supplier with a reasonable opportunity to perform the modifications according to Article VII clause 7 herein;
- all defence actions against claims, including but not limited to any compromise settlement, being vested in the Supplier;
- the defect of title not being due to any instructions of the Purchaser; and
- the alleged breach not being due to any modification of the product by the Purchaser, or to any extra-contractual use of the product by the Purchaser.

VII. Liability

1. If due to fault on the part of the Supplier in connection with any omitted or negligent performance of any arrangements agreed prior to or after the conclusion of the contract or due to a breach of any of the Supplier's subsidiary duties – such as, in particular, the obligation to provide instructions for the operation and maintenance of the product – the Purchaser is unable to use the product for its contractual purpose, the provisions of Article VI herein above and clause 2 of this Article VII herein below shall apply mutatis mutandis, and the Purchaser shall not be entitled to any other relief.
2. The liability of the Supplier for losses other than damage to the product which may be incurred – for any legal grounds whatsoever – shall be limited to the liability for
 - any wilful act, neglect or omission;
 - gross negligence on the part of the owner, officers or senior executives;
 - culpable death, injury or impact on health;
 - defects that the Supplier has maliciously concealed or the absence of which he has warranted;
 - defects to the product where the Supplier is liable for injury to persons or damage to privately used objects under product liability law.

In the event of culpable violation of cardinal contractual obligations, the Supplier shall also be liable for gross negligence on the part of non-executive staff and for slight negligence, with liability in the latter case being restricted to the reasonably foreseeable damage typical of the contract. - Further claims shall be excluded.

VIII. Manner of Execution

Illustrations and photographs in brochures and other documents shall not be binding. In particular, they shall not constitute any contractual commitment. Deviations in the design, arrangement and execution are expressly reserved.

IX. Statutory Limitation

Any claims of the Purchaser – for whatever legal grounds – shall become statute-barred in 12 months. Any wilful act, neglect or omission or any fraudulent deception as well as claims arising out of product liability law shall expire as provided for by law. They shall also apply to defects in a building structure or for delivery items that were used in accordance with their normal use in a building structure and caused its defectiveness.

X. Applicable Law, Place of Jurisdiction

1. The place of fulfilment shall be Bremen.
2. The law of the Federal Republic of Germany governing legal relationships between German parties shall apply exclusively to all legal relationships between the Supplier and the Purchaser. The original German wording of this translation shall take precedence.
3. The courts of the Supplier's place of registration shall have venue and jurisdiction. However, the Supplier shall be entitled to institute legal proceedings at the Purchaser's principal place of business.