

Scope

The following terms are applicable only to business persons, governmental entities or special governmental estates.

I. Application

1. Orders shall be binding upon the supplier only after written confirmation by the supplier. Any alternations or additions shall be made in writing. All quotations shall be non-binding, unless they have been expressly submitted as firm offers.
2. In cases where the parties have a continuing business relationship these conditions shall apply to all transactions between the parties, even if no explicit reference to this effect is made, provided that they have been provided to the customer in conjunction with previous purchasing contracts.
3. Any and all customer purchasing terms and conditions shall be rendered invalid unless they are expressly accepted by the supplier.
4. In the event that any individual provisions are rendered or should be rendered ineffective, this shall have no impact on the remaining conditions.

II. Prices

1. Prices shall be understood ex works, excluding value - added tax, freight, customs duty, subsidiary excise taxes on imports and packaging. Packing shall be charged at its actual cost.
2. In the event that relevant cost factors are altered significantly after a quotation or acknowledgement has been issued, the supplier and the customer shall come to an agreement in terms of a respective price adjustment for the prorated tooling charges.
3. In the event that the agreed-upon price is to depend on the weight of the finished components, the final price shall be based on the weight of the customer-approved production sample.
4. In the case of repeat orders the supplier shall not be bound by previously quoted prices.

III. Obligation to deliver and to accept shipments

1. The delivery period shall run from the date on which the supplier has received all information and documents required for carrying out the order and the advance payment, and, where the customer is to be responsible for this, the timely supply of materials. In the event that for reasons beyond the supplier's control, physical dispatch is impossible, the supplier's notification that the goods are ready for dispatch shall apply in determining compliance with the agreed upon delivery schedule.
2. If an agreed upon delivery period is not complied with for reasons the supplier is responsible for even although such acts were not intentional or grossly negligent, the customer shall, after granting a reasonable extension, be entitled, to claim compensation for the delay or to rescind from the contract. The compensation shall be limited to a maximum of 5% of the value of that part of the delivery which has not been made in compliance with the contractual schedule. The customer shall not have the right to rescind from the agreement if the customer, as such, is in default. The customer shall have the right to submit evidence that additional damages were suffered at the customer's end.
3. Reasonable partial deliveries, as well as commercially acceptable deviations of up to plus/minus 10% from the quantity ordered shall be acceptable.
4. In the case of blanket orders where the completion, size of production batches, and delivery dates have been left open, the supplier shall have the right within three months of confirmation of the order to require the customer to provide definite instructions. If the customer does not comply with this requirement within three weeks, the supplier shall have the right to set an extended deadline of an additional two weeks. After the expiration of this additional period the supplier shall have the right to either rescind from the contract and/or to refuse the execution of the order and to claim damages.
5. If the customer does not meet the obligation to accept the delivered goods, the supplier shall not be bound by the (German) legal provisions concerning self - redress by way of resale of rejected goods but may, without prejudice to any other rights he may have, sell the goods in question via a private contract to another buyer, after having informed the customer accordingly.
6. Should goods be taken back by the supplier in order to accommodate the customer, such items must be returned in perfect condition, original packing, and freight prepaid on the date the customer and the supplier have mutually agreed upon. The supplier shall be entitled to charge a reasonable amount for any cost which he may incur in taking the goods back.

7. Any event of force majeure shall entitle the supplier either to postpone delivery of the goods for the duration of the impediment and a reasonable start-up time, or to partially or completely rescind from the contract with regard to the part of the contract which has not been completed. Events of force majeure shall include: strike, lockout, or unforeseeable circumstances such as, for instance, plant stoppage, which prevent the supplier, despite the exercise of all reasonable efforts, from delivering the goods on time; the onus of proof lies with the supplier. The above shall also apply if any of the aforementioned impediments intervene during a delay in delivery or at a subcontractor's works. The customer may ask the supplier to declare within two weeks whether the supplier intends to withdraw from the contract or whether he wishes to deliver the goods within a reasonable additional period of time. If the supplier does not declare these intentions, the customer shall be entitled to rescind from the part of the contract which the supplier has not yet fulfilled. The supplier shall inform the customer immediately if an event of force majeure, as defined above, occurs. The supplier shall also ensure that the damage to the customer is minimised, if appropriate by handing tools over to the customer while the impediment lasts.

IV. Packaging, dispatch, transfer of risk and acceptance delay

1. Unless otherwise agreed, the supplier shall choose the method of packaging, the manner of dispatch and the shipping route to the best of his judgement.
2. Risk shall pass to the customer as soon as the goods leave the Supplier's works, even if delivery is made freight prepaid. In case of any delays in dispatch for which the customer is responsible, risk shall pass to the latter upon notification that the goods are ready for dispatch.
3. On receipt of a written request by the customer, the supplier will have the goods insured at customer's expense against any risks requested by the customer.

V. Retention of title

1. All goods shall remain the property of the supplier until all claims of the supplier against the customer have been met; this also applies when payments have been made in respect of the price for specified deliveries. Where business relations between customer and supplier are on a current account basis, the supplier shall retain title to the delivered goods as collateral for any outstanding balance owing to the supplier. In the event that payment of the purchase price is to be made by bill of exchange and the supplier incurs liabilities arising out of the bill, title to the goods in question shall pass to the customer only after the latter has honoured the said bill of exchange as the drawee (acceptor).
2. Any processing (of goods remaining the property of the supplier) by the customer shall be deemed to have been carried out to the order of the supplier and, notwithstanding § 950 BGB (German Civil Code), shall not result in the customer acquiring title to the new products thus created; rather, the supplier shall become the joint owner of the new products in proportion to the net invoice value of the customer's goods to the net invoice value of the processed goods which shall serve as goods subject to retention of title for the security of the supplier's claims according to paragraph 1 above.
3. In cases where the customer carries out processes, i. e., blending, compounding (of the goods remaining the property of the supplier), with other goods not being the property of the supplier, the provisions of § 947 and 948 BGB (German Civil Code) shall apply, and the supplier's joint ownership share in the new products shall thereafter constitute goods subject to retention of title for the purposes of these Conditions.
4. The resale by the customer of goods subject to the retention of title shall only be permitted in the ordinary course of business, and subject to the provision that the customer in turn contracts with the customer's clients subject to retention of title in compliance with paragraphs 1 - 3 above. The customer shall not be entitled to dispose of goods subject to retention of title in any other way; in particular, the customer shall not be entitled to pledge the goods or to transfer title to them by way of collateral.
5. In the event of any resale, the customer hereby assigns to the supplier, until all claims of the supplier have been met, any claims for payment or otherwise which the customer may have against the customer's own clients as a result of the resale, together with all subsidiary rights. If so requested by the supplier, the customer shall give to the supplier all information and hand over to the supplier all documents which are necessary for the supplier to assert relevant rights against the customer's client.
6. Should the goods governed by the retention of title clause, after having been processed as stated in paragraphs 2 and/or 3 above, be resold by the customer together with other goods, which are not the property of the supplier, the assignment of the claims mentioned in paragraph 5 above shall be limited to the invoice value of the goods subject to retention of title.
7. Insofar as the value of the security in favour of the supplier exceeds the total claims of the latter by more than 10%, the supplier shall be required to, at the request of the customer, release collateral in excess of this amount, at the customer's sole discretion.
8. Should any goods subject to retention of title be distributed or seized by a third party, the customer shall inform the supplier immediately. Any expenses for such interventions shall in all cases be borne by the customer, insofar as they are not borne by third parties.
9. Should the supplier, pursuant to the above provisions, make use of the supplier's right to retain title and take back goods subject to retention of title, the supplier shall have the right to sell the goods via private contract or have them put up for auction. The said goods will be taken back at the figure which corresponds to the realised net proceeds or the agreed contract price, whichever is less. The supplier reserves the right to claim damages in addition, in particular for loss of profit.

VI. Warranty and liability for defects

- 1.** The quality and workmanship of the products in general shall be determined by reference to the production samples which the supplier will, on request, submit to the customer for examination. Any warranty in respect of specific characteristics of the goods to be supplied and in respect of the performance of tooling shall only be valid if stated in writing in the order confirmation. References to technical standards shall serve as technical references only and shall not be construed as procurement warranties.
- 2.** Where the supplier has given technical advice to the customer beyond that required by the contract, the supplier shall only be liable for the functional capability and the suitability of the goods supplied if an express prior warranty has been provided in writing.
- 3.** Any complaints in respect of defects must be submitted to the supplier in writing without delay. Hidden defects must be reported immediately upon detection. In both cases, all claims for damages shall expire 12 months after the transfer of risk, unless otherwise agreed upon. In the event that statute provides for mandatory longer coverage pursuant to paragraph 438, article 1 no. 2 BGB (German Civil Code), paragraph 479 article 1 BGB (German Civil Code) and paragraph 634a article 1 no. 2 BGB (German Civil Code), these provisions shall apply.
- 4.** In case of justified complaints - which shall be determined based on the standards of quality and workmanship of the production samples approved by the customer in writing - the supplier shall be required to remedy such defects. In the event that the supplier does not meet these obligations within a reasonable time or if attempts to remedy fail repeatedly the customer shall have the right to claim a price reduction or to rescind from the contract. Additional claims, such as incidental costs incurred shall be restricted to the provisions set forth in VII. Replaced parts shall be returned to the supplier upon request.
- 5.** Unauthorised reworking and improper treatment shall result in the forfeiture of all warranty claims. The customer shall only be entitled, with the prior agreement of the supplier, to recondition the goods and to claim reimbursement of reasonable costs incurred, if taking this action is necessary in order to prevent a disproportionately large damage.

VII. General limitation of liability

In all cases where, based either on the contract terms or on the law, the supplier's liability for damages differs from that stipulated in the above Conditions, the supplier shall only be liable insofar as the supplier, the supplier's executives, employees or agents have verifiably acted willfully or with gross negligence in executing their obligations or if physical harm has been done to any person. The supplier's liability pursuant to pertinent product liability statutes for cases that may have been beyond the supplier's control shall not be affected by this provision. The same shall apply to the infringement of material parts of the agreement, whereby liability shall be limited to foreseeable damages that would typically occur within the scope of this type of agreement with the exception of the implications cited in sentence 1. In this context the burden of proof shall not be changed to the detriment of the customer.

VIII. Payment conditions

- 1.** Unless otherwise agreed, all payments shall be made free of charge and costs in Euro by bank transfer and to the supplier only.
- 2.** Unless otherwise agreed, the purchase price for deliveries or other services is payable in full within 30 days after invoice date.
- 3.** Should the agreed payment terms be exceeded, interest shall be charged at the rate of 2% above the then prevailing discount rate of the German Federal Bank, unless the supplier can prove that he has to pay interest at a higher rate.
- 4.** Bills of exchange are refused. Cheques are only accepted with reservation and after prior agreement. Any charges which may arise in this connection shall be borne by the customer.
- 5.** The customer shall be entitled to exercise rights of set off or of retention if his/her claims are either undisputed or have been judicially determined.
- 6.** Should the customer fail to comply with the payment conditions on an ongoing basis, or should circumstances arise which cast serious doubts on the creditworthiness of the customer, all claims of the supplier shall become due immediately. The supplier shall in addition be entitled to require payment in advance in respect of future deliveries and, after having allowed a reasonable additional period of time, to rescind from the contract.

IX. Tooling (tools)

1. The price for tooling also includes the cost of producing one set of samples, but not the cost of any testing and finishing equipment, or of any alterations caused by the customer. The supplier shall be responsible for the cost of producing any additional sets of samples if it is he/she who renders these necessary.
2. Unless otherwise agreed upon, the supplier shall be and remain the owner of any tooling made for the customer by him/her or by a third party to the supplier's order. Tooling will only be used for the customer's orders for as long as the customer meets his/her obligations to make payment and accept delivery. The supplier shall only be obliged to replace this tooling free of charge if this is necessary in order to produce the manufacturing quantity confirmed to the customer. The supplier's obligation to store the tooling shall expire two years after the last delivery of parts made from the tooling and after prior notification to the customer.
3. If it is agreed that the customer should become the owner of the tooling, title of the tooling shall pass to the customer upon payment of the purchase price. The supplier's obligation to deliver the tooling to the customer shall be substituted by his/her obligation to keep it in safe custody. Irrespective of the customer's legal claim for delivery up and of the useful life of the tooling, the supplier shall be entitled to exclusive possession of the tooling until the contract expires. The supplier shall mark the tooling as being third party property and, on request by the customer, shall have it insured at the latter's expense.
4. Where the tooling is the customer's property in accordance with paragraph 3 above, and/or where tooling has been loaned by the customer to the supplier, the liability of the supplier with regard to safe keeping and maintenance shall be limited to the degree of care he/she would adopt in his/her own affairs. The cost of maintenance and insurance shall be borne by the customer. The obligations of the supplier shall be lapse if, after completion of the order and upon request by the supplier, the tooling is not collected by the customer within a reasonable time. As long as the customer has not fully met his/her contractual obligations, the supplier shall, in any event, have a lien on the tooling.

X. Materials placed at the supplier's disposal

1. In cases where materials are to be supplied by the customer, they shall be delivered to the supplier together with a reasonable additional quantity of at least 5 % in good time and in perfect condition at the customer's expense and risk.
2. Failure to comply with these conditions shall entitle the supplier to a reasonable extension of the delivery time. Otherwise than in the case of an event of force majeure, the customer shall bear any additional costs which may arise including those from interruptions of production.

XI. Commercial patents, licenses and legal gaps

1. In cases where the supplier has to produce in accordance with drawing, models or patterns, or to use samples placed at his disposal by the customer, the customer guarantees that no property rights of third parties are being infringed in the destination country of said goods. The supplier shall draw the customer's attention to existing rights which are known to him. The customer shall hold the supplier harmless against claims of third parties and remedy any damage which may be caused. If a third party forbids the supplier from continuing manufacture or delivery on the strength of an alleged patent right the supplier shall, without investigation of the legal situation, be entitled to suspend the work until legal facts have been clarified by the customer and the third party. In the event that the supplier cannot be reasonably expected to continue the work given the legal situation, the supplier shall have the right to rescind from the agreement.
2. Any drawings and patterns sent to the supplier which do not lead to an order shall be returned on request; otherwise the supplier shall be entitled to destroy those three months after submission of quotation. This provision shall apply to the customer accordingly. The party that is entitled to destroy such documents and items shall notify the adverse party of the intended destruction in a timely fashion.
3. The supplier shall be entitled to all copyrights, commercial patents or licenses, in particular all user and utilization rights in the models, tools and devices, designs and drawings generated by the supplier or by a third party acting on behalf of the supplier.
4. In the event of legal gaps, No. VI shall apply accordingly.

XII. Place of fulfilment and jurisdiction

1. The domicile of the production plant shall be the place of fulfilment.
2. At the sole discretion of the supplier, the domicile of the supplier or the domicile of the customer shall be the place of jurisdiction also for certificate, bill of exchange or check disputes and proceedings.
3. This agreement shall be governed by German law. The application of the United Nations Treaty dated April 11, 1980 for contracts pertaining to the international sale of merchandise (BGB/German Civil Code 1989, page 586) for the Federal Republic of Germany (BGB/German Civil Code 1990, page 1477) shall be excluded.