

General

The terms and conditions set out below will apply to all goods and services supplied by us. Other terms and conditions will only be binding upon us where we have acknowledged them in writing. Separate and additional service terms and conditions will apply to installation and repair work. For software, even where the latter forms part of a product supplied by us, separate and additional contractual terms and conditions will also apply to provision of the software.

I. Proposal

1. Our proposals are subject to confirmation, cost estimates will be non-binding and, unless otherwise expressly agreed, subject to a charge. Dimensions, package dimensions, images, simulation results and drawings will only be binding for the execution of the order when expressly confirmed in writing.
2. We will retain ownership of and copyright over cost estimates, drawings and other documentation. These may not be disclosed or otherwise made accessible to third parties.

II. Prices

1. Unless otherwise agreed, prices will be calculated based on the prices valid at the time of delivery.
2. Unless otherwise noted in the proposal, prices will be for goods and services ex works, excluding packaging, transportation, insurance, installation and commissioning, plus any value added tax applicable at the time of delivery.

III. Delivery

1. Delivery deadlines will only be binding where agreed upon in writing. In case of doubt, the delivery deadline stipulated in the order confirmation will apply. The period will start upon commencement of the contract but not before fulfilment by the Purchaser of any existing obligations to cooperate, in particular the Purchaser providing any documentation, materials, approvals, clearances and, depending on the service, any advance payments agreed upon or taking out a letter of credit.

The agreed deadlines will also be deemed to have been met upon advice of readiness for dispatch if either the goods are not delivered on time or the services cannot be performed on time through no fault of our own.

2. Where failure to comply with delivery deadlines is attributable to force majeure or to other disruptions for which we are not responsible, e.g. war, terrorist attacks, import and export restrictions or industrial action, including such disruptions affecting suppliers, the agreed delivery deadlines will be extended accordingly. This will apply even if the disruptions occur at a time when we are behind schedule.
3. In the case of culpable failure to comply with an agreed delivery deadline for reasons other than those set out in clause III.2, the Purchaser will be entitled to withdraw from the contract after the expiration of a reasonable period stipulated in writing.
4. Any other rights of the Purchaser on the grounds of delay, particularly claims for further compensation, will be excluded to the extent set out in clause VII.
5. Where dispatch is delayed at the Purchaser's request, we will be entitled to charge a minimum of 1% of the invoice amount for each part month for the costs incurred for storage (barring any proof of significantly lower costs). Upon the fruitless expiration of a reasonable period, we reserve the right to withdraw from the contract. The Purchaser will be billed for any costs incurred by us in connection therewith.
6. Partial deliveries and corresponding invoices are permitted.

IV. Transfer of Risk; Dispatch

1. Delivery will be made “ex works” unless otherwise expressly agreed.
2. If the goods are dispatched to a different location at the Purchaser’s request, we may choose the shipping method unless otherwise stipulated by the Purchaser. Transport insurance will only be taken out upon the Purchaser’s instruction and at the latter's expense.
3. Deliveries of spare parts and return deliveries of repaired goods will be made against invoicing for reasonable shipping and packaging costs plus remuneration for the service provided by us, where such costs are not covered by the liability for defects. Return shipping to us and shipping for repair work, except where there is liability for defects, must always be free of charge.
4. Where shipment is delayed on account of circumstances not attributable to use, the risk will pass to the Purchaser on the date of advice of readiness for dispatch.

V. Warranty

1. Claims for defects will expire in 12 months. The foregoing provision will not apply where the law according to Sections 438, para. 1, no. 2 (buildings and items for buildings) and 634a (construction defects) of the German Civil Code provides for longer limitation periods.
2. The limitation period for material defects will start from commissioning of the item, in the case of vehicle and automotive equipment products at the time the goods are actually used, i.e. for original installations, upon initial registration, and in other cases upon installation, but not more than 6 months after hand-over of the item (transfer of risk) or notification of the item being ready for dispatch in our factory.
3. In the event of a material defect arising within the limitation period where the cause was already present at the time of the transfer of risk, we may choose to either rectify the defect or supply a defect-free item by way of supplementary performance. The product forming the subject of the complaint must be sent to us, or to the nearest customer service centre approved by us for the product territory in question, for repair. We will bear the costs of the cheapest method of sending the product from/to the Purchaser’s delivery address agreed upon for the original delivery, providing the complaint proves justified.
We will rectify the defect by replacing or repairing the defective product. Defects will only be rectified at the installation site within the framework of special agreements and in accordance with our applicable service terms and conditions.
4. The warranty will lapse if the product is modified by third parties or if third-party components are installed, except where there is no causal connection between the defect and the modifications, and if stipulations regarding shipping, packaging, installation, handling, use or maintenance are not followed, or in the case of defective installation by the Purchaser or third parties.
5. Natural wear and tear and damage due to improper handling are excluded from the warranty. In particular, we will not be liable for changes to the condition or operation of our products due to improper storage or unsuitable equipment, and due to climatic or other influences. The warranty will not cover defects relating to design faults or the choice of unsuitable materials where the Purchaser specified said design or materials in spite of our prior advice. We do not offer any warranty for parts provided by the Purchaser.
6. The Purchaser must provide us, or a third party engaged by us to perform warranty work, with the necessary time and opportunity to carry out the warranty work. Such work may only be carried out by the Purchaser itself in the situations set out in Section 637 of the German Civil Code and with our consent.
We will bear the costs necessary for supplementary performance to an extent that is in reasonable proportion to the value of the defective item, the severity of the defect and/or the ability to obtain supplementary performance by some other means. All other costs will be borne by the Purchaser.
7. The limitation period will be suspended for the period of time needed for the supplementary

performance. It will then continue to run.

8. If supplementary performance fails, the Purchaser will be entitled to withdraw from the contract or reduce the remuneration.

9. Any other rights in respect of defects – particularly contractual or non-contractual claims for damages not caused to the goods themselves – are excluded to the extent stipulated in clause VII.

10. If a defect complaint proves unjustified, we will be entitled to bill the Purchaser for all expenses incurred by us as a result thereof.

11. In the case of defects of title not caused by the infringement of third-party property rights, the provisions of clause V. of these GTC will apply accordingly.

VI. Property Rights

1. We will only be liable for claims arising due to an infringement of property rights and copyrights where said property right or copyright is not, or was not, owned by the Purchaser or by a company in which the Purchaser holds, directly or indirectly, a majority of the capital or voting rights, where the Purchaser notifies us immediately of any infringement risks and alleged cases of infringement as soon it becomes aware of them, and permits us, upon our request and where possible, to conduct the litigation (including out-of-court proceedings), and in the case of property rights, where at least one property right from the property right family has been published either by the European Patent Office or in the Federal Republic of Germany, France, Great Britain, Austria or the USA.

2. We will be entitled, at our discretion, to acquire a licence for the Purchaser for the product (allegedly) infringing a property right or copyright, or to modify said product such that it no longer infringes the property right or copyright, or to replace said product with a similar product that does not infringe the property right or copyright.

3. The liability under clause VI. 1. and 2. will govern all liability for freedom from property rights and copyrights and will end five years after delivery of the product in question.

This will not apply where the products have been manufactured in accordance with the Purchaser's specifications or where the alleged infringement of property rights or copyrights results from use of the product in conjunction with another item not originating from us, or where the products are used in a way we could not have foreseen.

VII. Liability

Unless otherwise stipulated within these delivery terms and conditions, we will only be liable for damages and for compensating for wasted expenditure within the meaning of Section 284 of the German Civil Code (hereinafter "Compensation") caused by the infringement of contractual or non-contractual obligations in the event of wilful acts or gross negligence by our legal representatives or vicarious agents, in the event of injury to life, limb or health, due to accepting a warranty or procurement risk, the infringement of material contractual obligations or on the grounds of mandatory liability in accordance with the German Product Liability Act or other mandatory liability. Compensation for breaching material contractual obligations will however be limited to the damage foreseeable for this type of contract, providing there is no wilful intent or gross negligence on the part of our legal representatives or vicarious agents or injury to life, limb or health and where no warranty or procurement risk has been accepted. The foregoing provisions will not entail any change in the burden of proof to the Purchaser's detriment.

VIII. Retention of Title

1. The goods supplied will remain the property of the Vendor until payment is made in full. The Vendor will be entitled to take back the goods if they are not paid for.

a) Open account retention of title

In the case of an ongoing business relationship, the goods supplied will remain the property of the

Vendor until all receivables under the open account or business relationship have been paid in full.

b) Balance clause

Where there is an open account relationship, the retention of title is to remain in place even after being added to the open account or after balancing.

2. Where the retention of title is invalid according to the law of the country where the goods are located, a protective mechanism corresponding to the retention of title in this area will be deemed to have been agreed upon. Where the Purchaser's collaboration is required to establish such rights and/or retention of title, the Purchaser will take all measures required to establish and maintain such rights or the retention of title.

3. If, under the law of the region in which the goods are located, the agreement of a wider-reaching retention of title clause (e.g. advance assignment of the buyer's receivables under the resale of goods supplied by us) is permitted, the Purchaser will conclude such an agreement with us upon request.

4. The Purchaser is entitled to install the goods supplied in a property / building. The Purchaser hereby assigns any resulting claim for remuneration or from the resale of the property / building, up to the invoice value of the goods supplied by us, together with all ancillary rights, including the right to be granted a first-ranking lien by way of security.

IX. Payments

1. Unless otherwise agreed in writing, payment must be made within 30 days from the invoice date, in the case of repairs and other services within 10 days, in cash and without deductions or transaction charges. We may also make supply dependent on payment against delivery (e.g. cash on delivery or direct debit) or advance payment, however.

2. We will be entitled to offset payments against the oldest receivable due.

3. Payment by bill of exchange is not permitted.

4. In the event of the buyer falling into arrears with any payment obligations towards us, all outstanding receivables will become payable immediately.

5. If the Purchaser falls into payment arrears, we will be entitled to demand the immediate payment in cash of all due and undisputed claims under the business relationship. This right will not be excluded by deferment or the acceptance of cheques. We will also be entitled to make remaining deliveries only with advance payment or the provision of collateral.

In the event of a serious deterioration of the Purchaser's financial situation, we will be entitled to withdraw from the contract if the Purchaser is unable to provide payment against delivery or collateral in spite of being asked to do so.

6. The Purchaser may only offset claims that are undisputed or have been legally established.

7. We will be entitled to transfer claims arising from our business relationships.

X. Place of Jurisdiction; Applicable Law

1. The place of jurisdiction will be the headquarters of the operating facility fulfilling the order where the Purchaser is a merchant, a legal entity under public law, or a public law special fund. We will also be entitled to bring action before a court having jurisdiction in the place where the Purchaser is headquartered or has a branch office.

2. German substantive law will apply to all legal relations between us and the Purchaser to the exclusion of the provisions of the United Nations Convention on the International Sale of Goods (CISG).

Last updated: 2016