As of 01/2017
ECVKI 0019

General Terms of Sale and Delivery

I. General

All deliveries and services shall be governed by these Terms and Conditions and by any separate contractual agreements. Any conflicting terms and conditions of purchase of the Purchaser shall not become part of the contract, even upon acceptance of the order.
Unless otherwise agreed, the contract shall be concluded upon the Supplier's written order confirmation.
1. The Supplier reserves all proprietary rights and copyrights in samples, cost estimates, drawings and similar information of a tangible or intangible nature, including information in electronic form; such items and information may not be made available to third parties. The Supplier undertakes to make information and documents designated as confidential by the Purchaser accessible to third parties only with the Purchaser's consent.

II. Price and Payment

1. Unless otherwise agreed, prices are ex works, including loading at the works, but excluding packaging and unloading. Value added tax at the applicable statutory rate shall be added to the prices.
2. Unless otherwise agreed, payment shall be made to the Supplier's account without any deduction, as follows:
one third as a down payment following receipt of the order confirmation,
one third as soon as the Purchaser has been notified that the principal components are ready for dispatch, and the remaining balance within one month after the passing of risk.
3. The Purchaser is entitled to withhold payments only to the extent that its counterclaims are undisputed or have been finally established by a court.
4. The Purchaser is entitled to set off counterclaims arising from other legal relationships only to the extent that such claims are undisputed or have been established by a final and binding judgment.

III. Delivery Time, Delay in Delivery

1. The delivery time is determined by the agreements between the contracting parties. The Supplier's compliance with this delivery time is contingent upon all commercial and technical issues between the contracting parties having been resolved and the Purchaser having fulfilled all obligations incumbent upon it, such as providing the necessary official certificates or permits or making a down payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.
2. Adherence to the delivery schedule is subject to the Supplier receiving correct and timely delivery from its own suppliers. The Supplier shall notify the customer of any impending delays as soon as possible.
3. The delivery period is deemed to have been met if the goods have left the Supplier's works by the time the period expires or if the Supplier has notified the Customer that the goods are ready for shipment. If acceptance is required, the acceptance date shall be decisive – except in cases of justified refusal of acceptance – or, alternatively, the notification that the goods are ready for acceptance.
4. If shipment or acceptance of the item supplied is delayed for reasons attributable to the Purchaser, the Purchaser shall be charged the costs incurred as a result of the delay, beginning one month after notice of readiness for shipment or acceptance.
5. If failure to meet the delivery time is due to force majeure, labour disputes or other events beyond the Supplier's control, the delivery time shall be extended appropriately. The Supplier shall notify the Purchaser of the beginning and end of such circumstances as soon as possible.
6. The Purchaser may rescind the contract without setting a deadline if the Supplier's entire performance becomes permanently impossible before passing of risk. The Purchaser may also withdraw from the contract if, in the case of an order, the fulfilment of a portion of the delivery becomes impossible and the Purchaser has a legitimate interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the contract price attributable to the partial delivery. The same applies in the event of the Supplier's inability to perform. Otherwise, Section VII.2 applies.
If the impossibility or inability to perform occurs during a delay in acceptance, or if the purchaser is solely or predominantly responsible for these circumstances, the purchaser remains obligated to provide consideration.
7. If the Supplier is in default and the Purchaser suffers damage as a result, the Purchaser is entitled to demand reasonable compensation for delay. Such liquidated damages shall amount to 0.5% for each full week of delay, but shall not exceed a total of 5% of the value of that part of the total delivery which, as a result of the delay, cannot be used in time or in accordance with the contract.
If the purchaser sets the supplier a reasonable deadline for performance after the due date – subject to the exceptions provided by law – and the supplier fails to meet that deadline, the purchaser is entitled to rescind the contract in accordance with the provisions of law. The Purchaser undertakes, at the Supplier's request, to declare within a reasonable period whether he will exercise his right of withdrawal.
Further claims arising from a delay in delivery shall be governed exclusively by Section VII.2 of these Terms and Conditions.

IV. Passing of Risk, Acceptance

1. Risk passes to the Purchaser when the delivery item has left the works, even if partial deliveries are made or the Supplier has assumed other services, such as shipping costs or delivery and installation. Where acceptance is to take place, it shall determine the transfer of risk. It must be carried out without delay on the acceptance date or, alternatively, after the Supplier's notice of readiness for acceptance. The Purchaser may not refuse acceptance on account of a non-material defect.
2. If delivery or acceptance is delayed or does not take place due to circumstances beyond the Supplier's control, the risk shall pass to the Purchaser on the date the Supplier notifies the Purchaser that the items are ready for shipment or acceptance. The Supplier agrees to purchase, at the Purchaser's expense, any insurance policies the Purchaser requires.
3. Partial deliveries are permitted insofar as they are reasonable for the Purchaser.

V. Retention of Title

1. The supplier retains title to the delivery item until all payments – including any additional payments owed for ancillary services – under the supply contract have been received.
2. The Supplier is entitled to insure the delivery item against theft, breakage, fire, water damage, and other types of damage at the Purchaser's expense, unless the Purchaser can provide proof that he has taken out such insurance himself.
3. The Purchaser may neither sell, pledge nor assign the delivery item as security. In the event of seizure, confiscation or other orders by third parties, the Purchaser must notify the Supplier immediately.
4. If the Purchaser acts in breach of the contract – in particular, in the event of late payment – the Supplier is entitled to reclaim the delivery item after having issued a reminder and the Purchaser is obligated to surrender them.
5. Due to the retention of title, the supplier may demand the return of the delivery item only if he has withdrawn from the contract.

VI. Claims in Respect of Defects

In the event of material defects or defects of title in the delivery, the Supplier shall be liable – to the exclusion of any further claims, subject to Section VII – as follows:

Material Defects
1. Any parts that prove to be defective as a result of circumstances occurring prior to the passing of risk shall be repaired or replaced with defect-free parts, at the Supplier's discretion. The Supplier must be notified in writing of such defects immediately. Replaced parts become the property of the Supplier.
2. In order for the Supplier to carry out any repairs or replacement deliveries it deems necessary, the Purchaser shall, after consulting with the Supplier, grant the Supplier the necessary time and opportunity to do so; otherwise, the Supplier shall be released from liability for any resulting consequences. Only in urgent cases where operational safety is at risk or to prevent disproportionately large damage – in which case the Supplier must be notified immediately – does the Purchaser have the right to remedy the defect itself or have it remedied by a third party and to demand reimbursement from the Supplier for the necessary expenses.
3. If the complaint proves to be justified,, the supplier shall bear the direct costs of repair or delivery of a replacement, including shipping costs. In addition, the Supplier shall bear any installation and removal costs that may be necessary, provided that such costs were part of the original scope of services, as well as the costs of providing any necessary labour, including travel expenses, provided that this does not impose a disproportionate burden on the Supplier.
4. The Purchaser has the right to rescind the contract in accordance with statutory provisions if the Supplier – subject to the statutory exceptions – allows a reasonable period set for it to remedy the defect or provide a replacement due to a material defect to elapse without taking action. If the defect is only insignificant, the purchaser is entitled only to a reduction in the contract price. Otherwise, the right to a reduction in the contract price is excluded.
5. Any other claims shall be subject exclusively to Section VII. 2 of these Terms and Conditions.
6. In particular, no liability is assumed in the following cases: Inappropriate or improper use, incorrect installation or commissioning by the Purchaser or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building site, chemical, electrochemical, or electrical influences – provided that the Supplier is not responsible for them.
7. If the Purchaser or a third party carries out improper repairs, the Supplier shall not be liable for any resulting consequences. The same applies to any modifications made to the delivery item without the Supplier's prior consent.

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Defects of Title

8. If the use of the delivered item results in an infringement of industrial property rights or copyrights in Germany, the Supplier shall, at its own expense, either secure for the Purchaser the right to continue using the item or modify the delivered item in a manner reasonable for the Purchaser so that the infringement no longer exists.
If this cannot be done under economically reasonable terms or within a reasonable period of time, the Purchaser is entitled to rescind the contract. Under the conditions specified above, the Supplier is also entitled to rescind the contract.
In addition, the Supplier shall indemnify the Purchaser against any undisputed or claims established by a final and binding judgment by the relevant intellectual property rights holders.
9. Subject to Section VII.2, the Supplier's obligations set forth in Section VI.8 are exhaustive in the event of an infringement of industrial property rights or copyrights.

They exist only if

- the Purchaser immediately notifies the Supplier of any alleged infringements of intellectual property rights or copyrights,
- the Purchaser provides the Supplier with reasonable assistance in defending against the asserted claims or enables the Supplier to implement the modification measures in accordance with Section VI. 8,
- all defensive measures, including out-of-court settlements, remain reserved to the Supplier,
- the defect in title is not due to an instruction of the Purchaser, and
- the infringement of rights was not caused by the purchaser having altered the delivered item without authorization or having used it in a manner not in accordance with the contract.

VII. Liability of the Supplier, Exclusion of Liability

1. If the delivery item cannot be used by the Purchaser in accordance with the contract as a result of the Supplier's culpable omission or provision of incorrect recommendations or advice – whether given before or after the conclusion of the contract – or as a result of the Supplier's culpable breach of other ancillary contractual obligations – in particular, instructions for the operation and maintenance of the delivery item – then the provisions of Sections VI and VII.2 shall apply, to the exclusion of any further claims by the Purchaser.
2. The Supplier shall be liable for damages that did not occur to the delivery item itself – regardless of the legal grounds – only

a. in cases of intent,
b. in cases of gross negligence on the part of the owner / the governing bodies, or executive officers,
c. in cases of culpable injury to life, body or health,
d. in cases of defects that the supplier has fraudulently concealed,
e. within the scope of a guarantee,
f. in cases of defects in the delivery item, to the extent that liability exists under the German Product Liability Act (Produkthaftungsgesetz) for personal injury or property damage to items used for private purposes.

In the event of culpable breach of material contractual obligations, the Supplier shall be also liable for gross negligence on the part of non-executive employees and for slight negligence, in the latter case, liability is limited to the reasonably foreseeable loss or damage typical of the contract.
Any further claims are excluded.

VIII. Limitation Period

All claims by the Purchaser – regardless of their legal basis – shall become time-barred after 12 months. For damage claims under Section VII. 2 a–d and f, the statutory time limits apply. They also apply to defects in a building or to delivery items that were used in accordance with their customary use and caused the building's defectiveness.

IX. Software Usage

Insofar as software is included in the scope of delivery, the Purchaser is granted a non-exclusive right to use the delivered software, including its documentation. It is provided for use on the delivery item for which it is intended. Using the software on more than one system is prohibited.
The Purchaser may duplicate, modify, translate or convert the software from object code into source code only to the extent permitted by law (§§ 69 a ff. UrhG, German Copyright Act). The Purchaser agrees not to remove or alter manufacturer's information – in particular, copyright notices – without the Supplier's prior express consent.
All other rights in the software and documentation, including copies, remain with the Supplier or the software supplier. The granting of sublicences is not permitted.

X. Governing Law, Place of Jurisdiction

1. All legal relationships between the Supplier and the Purchaser shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties.
2. The place of jurisdiction is the court with jurisdiction over the Supplier's place of business. However, the Supplier is entitled to file a lawsuit at the Purchaser's principal place of business.