

General Terms of Business (GTB)

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I. General provisions

1. The scope of delivery or service (hereinafter: deliveries) is defined in the written statements that are reciprocally made. However, any general terms of business used by the Customer shall be applicable only to the extent that the supplier or service provider (hereinafter: the Supplier) has expressly agreed to them in writing.
2. The Supplier reserves its ownership rights and copyright exploitation rights to cost estimates, drawings and other documents (hereinafter: document), without restrictions of any kind. The documents may not be disclosed to third parties except with the prior consent of the Supplier and, if the order is not placed with the Supplier, must be returned to the latter immediately on request. Sentences 1 and 2 above apply accordingly to documents of the Customer; however, these may be disclosed to such third parties to whom the Supplier has permissibly transferred deliveries.
3. The Customer has the non-exclusive right to use standard software with the agreed features in unmodified form on the agreed devices. The Customer may make two backup copies without requiring an explicit agreement to that effect.
4. Part-deliveries are permissible, provided this is reasonable for the Customer.

II. Prices and terms of payment

1. Unless otherwise agreed, the prices are ex works and do not include packaging, and are subject to value-added tax at the respective statutory rate.
2. If the Supplier has assumed responsibility for installing or assembling equipment, and if nothing to the contrary has been agreed, the Customer shall bear all the secondary costs that are necessary in addition to the agreed payment, such as travel expenses, costs for transporting tradesmen's tools and personal luggage, daily allowances.
3. Payments shall be made to the Supplier's point of payment.
4. The Customer may not set-off counterclaims unless these are undisputed or have been established by a final court decision.

III. Retention of title

1. The delivery items (reserved title goods) shall remain the property of the Supplier until all amounts owed to the Supplier by the Customer under the business relationship have been settled. If the value of all collateral rights accruing to the Supplier exceeds the value of all the secured claims by more than 20%, the Supplier shall release a respective portion of the collateral at the request of the Customer.
2. As long as there is retention of title, the Customer is not permitted to pledge the goods or to transfer ownership of them as collateral, and resale is permitted only for resellers in the normal course of business and on condition that the reseller receives payment from its customers or reserves title by stating that ownership is not transferred to the customer until the latter has honored its obligations to pay.
3. The Customer shall notify the Supplier immediately of any levies of attachment, seizures or other disposals or encroachments by third parties.
4. If the Customer acts in breach of its obligations, in particular in the event of default on payment, the Supplier has the right to withdraw from the contract and to take back deliveries after a reasonable deadline given to the Customer has expired to no avail; this is without prejudice to the statutory provisions on dispensability of setting a deadline. The Customer has a duty to surrender the goods.

IV. Deadlines for delivery and default

1. Compliance with delivery deadlines requires timely receipt of all documents, required licenses and clearances to be provided by the Customer, in particular plans and materials of whatever kind to be provided by the Customer, as well as compliance with the agreed terms of payment and other obligations on the part of the Customer. If these preconditions are not met on time, the deadlines shall be extended by a reasonable amount; this rule shall not apply if the Supplier was responsible for the delay.
2. If failure to comply with deadlines is due to force majeure, e.g., mobilization, war and civil unrest, or attributable to similar events, such as strike or lock-out, the deadlines shall be extended by a reasonable amount.
3. In any cases of delayed delivery, including delivery after expiry of a deadline set for the Supplier, no claims to compensation by the Customer due to delayed delivery, and no claims to compensation instead of performance, shall be accepted if they exceed the limits specified in clause 3. The latter restriction shall not apply if we bear compulsory liability due to willful intent or gross negligence on our part, or due to personal injury to life, body or health. The Customer may withdraw from the contract in accordance with statutory provisions only on condition that the delay in delivery was the fault of the Supplier. The above provisions shall not involve the burden of proof being shifted to the detriment of the Customer.
4. The Customer shall state within a reasonable period, at the request of Supplier, whether it withdraws from the contract due to delayed delivery, or insists on delivery.
5. If dispatch or delivery is delayed at the request of the Customer by more than one month after notification of readiness to dispatch or deliver, the Customer may be charged storage fees amounting to 0.5% of the price of the delivery items for each month commenced, but at most 5% of said value. The above is without prejudice to the Parties' right to prove that storage costs are higher or lower.

V. Transfer of risk

1. Even when delivery is carriage free, risk passes to the Customer:
 - a) when the consignment has been dispatched or collected, in the case of deliveries without installation or assembly. At the request and expense of the Customer, deliveries shall be insured by the Supplier against the usual risks of damage in transit.
 - b) on the date of acceptance in the Customer's own establishment or, if so agreed, after trial operation has been conducted faultlessly, in the case of delivery with installation or assembly.
2. If dispatch, delivery, commencement, execution of installation or assembly, acceptance in the Customer's own establishment or trial operation is delayed for reasons that are the fault of the Customer, or if the Customer defaults on acceptance for other reasons, risk shall pass to the Customer.

VI. Installation and assembly

Unless otherwise agreed in writing, the following provisions shall apply to installation and assembly:

1. The Customer shall assume responsibility for, and provide in a timely manner, at its own expense:
 - a) all earthwork, construction work and other ancillary work, including the requisite skilled and temporary manpower, construction materials and tools,
 - b) the utility items and materials required for assembly and commissioning, such as scaffolding, hoisting and other equipment, fuels and lubricants
 - c) energy and water, including connections, heating and lighting,
 - d) on the installation site, adequately large, dry and lockable rooms for the safe storage of machinery parts, apparatus, materials, tools, etc., as well as appropriate work and rest rooms for installation personnel, including sanitary facilities that are reasonable in the circumstances; the Customer must also implement on the construction site the safety measures that it would take to protect its own property, in order to protect the property of the Supplier and the installation personnel
 - e) protective clothing and protective equipment that is necessary due to special circumstances on the installation site.
2. Before installation work begins, the Customer shall provide, of its own accord, all details concerning the location of hidden power cables, gas pipes and water pipes or similar systems, as well as the necessary details in respect of statics.
3. Before installation or assembly work begins, all materials, equipment and items required for commencement of work must be on the installation or assembly site, and the progress of all preliminary work must be such that installation or assembly can be started in accordance with the contract and performed without interruption. Access roads and the place of installation or assembly must be levelled and cleared.
4. If installation, assembly or commissioning is delayed by circumstances beyond the control of the Supplier, the Customer shall bear any reasonable costs incurred for waiting time and/or for any additional trips that may be necessary on the part of the Supplier or the installation personnel.
5. Each week, the Customer shall provide the Supplier without delay with the number of hours worked by the installation personnel, and the time at which installation, assembly or commissioning work stopped.
6. If, after completion of the work and services, the Supplier requests that acceptance procedures be carried out, then the Customer shall do so within two weeks. If acceptance procedures are not carried out, acceptance shall be deemed declared. Acceptance shall likewise be deemed declared if the Customer uses the delivered product, where relevant after completion of an agreed test phase.

VII. Receipt of deliveries

The Customer may not refuse deliveries due to insignificant defects.

VIII. Material defects

The Supplier bears liability for material defects as follows:

1. All those parts or services must be remedied, redelivered or reperformed at no charge, at the discretion of the Supplier, which show a material defect within the period of limitation – regardless of operating hours –, provided that the cause of the defect already existed when risk passed to the Customer.
2. Warranty claims for material defects become barred by limitation after 24 months. This does not apply if the German Civil Code stipulates longer limitation periods in Sections 438 (1) No. 2 (buildings and things used for buildings), 479 (1) (rights of recourse) and 634a (1) No. 2 (construction defects), and in cases of personal injury to life, body or health, or in the case of a willful or grossly negligent breach of obligations by the Supplier, or malicious non-disclosure of a defect. This shall be without prejudice to the statutory regulations on suspension of expiration, suspension and recommencement of the period of limitations.
3. The Customer must notify the Supplier of any material defects immediately and in writing.
4. If a complaint about defects is made, payments by the Customer may only be withheld to an extent that is in reasonable proportion to the material defects that have arisen. The Customer may only withhold payments if a complaint about defects has been made and no doubt can be cast on the justification for the complaint. If the complaint about defects was unjustified, the Supplier has the right to demand compensation for the expenses it incurred.
5. The Supplier must firstly be given an opportunity to remedy the defect within a reasonable period.
6. If efforts at remedy fail, the Customer may withdraw from the contract or reduce the payment, without prejudice to any claims to damages under Article XI below.
7. Warranty claims do not arise if there is only an insignificant deviation from the agreed properties, if there is only insignificant impairment of usability, in cases of natural wear and tear, or damage occurring after the passing of risk as a result of incorrect or negligent handling, excessive loads, unsuitable operating supplies, defective construction work, unsuitable building ground or due to special external factors that are not anticipated by the contract, and in the case of non-reproducible software errors. If the Customer or third parties carry out modifications or repair work in an improper manner, no warranty claims may be lodged for these or for their consequences.
8. Claims by the Customer in respect of expenses necessitated by remedy, in particular transport, travel, labor and material expenses, shall not be accepted if the expenses increase because the delivery item was subsequently brought to a different place than the Customer's place of business, unless such delivery accords with the normal use of the delivery item.
9. Any rights of recourse on the part of the Customer against the Supplier under Section 478 BGB (German Civil Code) shall exist only to the extent that the Customer has not concluded agreements with its own customers that go beyond the statutory warranty claims. No. 8 above shall also apply accordingly to the scope of the Customer's claims to recourse against the Supplier under Section 478 (2) BGB.
10. For the rest, Article XI below (Other claims to damages) shall be applicable to claims to damages. No further claims on the part of the Customer against the Supplier and its vicarious agents, or other claims besides those regulated by this Article VIII, shall be accepted.

IX. Intellectual property rights and copyrights

1. Unless otherwise agreed, the Supplier shall provide delivery free of third-party intellectual property rights and copyrights (hereinafter: IPRs) only in the country where the place of delivery is located. If a third party asserts justified claims against the Customer due to infringement of IPRs by deliveries made by the Supplier and used in accordance with the contract, the Supplier shall bear liability towards the Customer within the period defined in Article VIII No. 2 above as follows:

a) The Supplier shall, at its own discretion, either procure a right of use for the product at its own expense, or shall modify the product in such a way that it no longer infringes the intellectual property right, or shall replace it. If the Supplier is unable to do so on reasonable terms, the Customer may exercise its statutory right to withdraw or to reduce the price.

b) The Supplier's obligation to pay damages is determined by Article XI.

c) The above obligations shall only be incumbent on the Supplier if the Customer immediately notifies the Supplier in writing about the claims being asserted by the third party, does not acknowledge the infringement and reserves the right for the Supplier to undertake any measures in defense and to negotiate a settlement. If the Customer stops using the deliverables in order to minimize damage or for other good cause, it shall notify the third party that such discontinuation of use may not be construed as acknowledgment of the purported infringement of an IPR.

2. Claims by the Customer shall not be accepted if the Customer is responsible for the infringement of intellectual property.

3. Claims by the Customer shall also be excluded if the infringement of IPRs is caused by special requirements made by the Customer, by usage that is not foreseeable by the Supplier or which is caused by the delivered item being modified by the Customer or use in conjunction with products that were not supplied by the Supplier.
4. If IPRs are infringed, the provisions in Article VIII Nos. 4, 5 and 9 shall apply accordingly for the claims of the Customer that are regulated by No. 1 a) above.
5. If there are any other legal defects, the provisions of Article VIII shall apply accordingly.
6. No further claims on the part of the Customer against the Supplier and its vicarious agents, or other claims besides those regulated by this Article IX, shall be accepted.

X. Impossibility; adjustment of contract

1. If delivery is impossible, the Customer has the right to demand compensation for damages, unless it is not the fault of the Supplier that delivery is impossible. However, the Customer's claim to damages is limited to 10% of the value of that part of the delivery that cannot be put into useful operation due to delivery being impossible. This limitation shall not apply if, in cases of willful action, gross negligence or because of personal injury to life, body or health, liability is mandatory; this shall not involve the burden of proof being shifted to the detriment of the Customer. The above is without prejudice to the right of the Customer to withdraw from the contract.
2. If unforeseen events within the meaning of Article IV No. 2 substantially change the commercial importance or the content of the delivery or have substantial impacts on the operations of the Supplier, the contract shall be reasonably amended in good faith. If this is financially unacceptable, the Supplier has the right to withdraw from the contract. If it wishes to exercise this right to withdraw, it must notify the Customer immediately after learning about the consequences of the event, even if an extension of the delivery period was agreed with the Customer.

XI. Other claims to damages

1. No claims on the part of the Customer to damages or reimbursement of expenses (hereinafter: claims to damages), regardless of legal basis, in particular due to breaches under the law of obligations, or due to impermissible acts, shall be accepted.
2. This principle shall not apply if liability is mandatory, e.g., under the Product Liability Act, in cases of willful action, gross negligence, due to personal injury to life, body or health, or due to material breach of contract. In the event of a material breach of contract, the claim to damages shall be limited, however, to the foreseeable damages typically associated with this kind of contract, unless the damage was caused by willful action or gross negligence, or the Contractor bears liability due to personal injury to life, body or health. The above provisions shall not involve the burden of proof being shifted to the detriment of the Customer.
3. If the Customer is entitled to damages under this Article XI, they shall be barred by limitation on expiry of the statutory period of limitation for warranty claims in respect of material defects, pursuant to Article VIII No. 2 above. In the case of claims to damages under the Product Liability Act, the statutory regulations on statute-barring shall apply.

XII. Supplementary delivery terms for delivery to foreign countries

1. The Customer shall inspect our delivery immediately.
2. Warranty claims of whatever kind may only be asserted if the complaint is made in writing no later than one week after receipt of the goods.
3. Any warranty provided is rendered void if our operating and other instructions are not followed, or if our products are modified, or if parts are replaced.
4. If defects arise, we may, at our own discretion, replace the defective part with a free replacement delivery, or arrange for the part to be repaired at the Customer's premises by our authorized agent.
5. The product must be delivered to us if warranty claims are made. If this is not possible, or undesirable for the Customer, we shall carry out the work on site at the express request of the Customer and against placement of an order to that effect.
6. Expenses for service work are calculated in accordance with our applicable list of charges, "Hourly rates and conditions for service work".
7. The calculation is carried out regardless of whether the warranty claim was justified. No further claims by the Customer, in particular claims to damages, and regardless of legal basis, shall be accepted.
8. This principle shall not apply if liability is mandatory, for example in cases of personal injury, or under the Product Liability Act in cases of damage to privately used items, or due to willful action or gross negligence or due to the absence of guaranteed properties.

XIII. Place of jurisdiction and governing law

1. The exclusive place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship is the domicile of the Supplier, if the Customer has commercial capacity. However, the Supplier also has the right to sue the Customer at the domicile of the Customer.
2. Legal relations in connection with this contract are governed by substantive German law, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIV. Binding nature of the contract

Even if individual provisions are legally invalid, the remainder of the contract shall remain binding. This principle shall not apply if adherence to the contract would entail unreasonable hardship for a Party.