

General Terms and Conditions of Business 01.10.2019

I. General

1. All deliveries and services are based on these conditions, as well as on possibly separately contractually agreed stipulations. Deviating purchase conditions of the customer do not become subject matter, not even upon order acceptance.

A contract is resulting – in absence of special agreement – with the written order confirmation of the supplier.

These conditions are only applicable versus entrepreneurs in the sense of § 14 BGB.

2. The supplier reserves property and copyright for all samples, estimates of costs, drawings, and similar information of physical and intangible kind – also in electronic form; they may be passed on to third parties only after expressive written consent.

The supplier is obliged to pass-on information and documents named secret by the customer to third parties only after consent of the customer.

II. Offers and confirmation of an order

1. Offers from Mehrer are always non-binding. Orders require written confirmation from Mehrer for them to be legally binding.
2. If documentation is enclosed with an offer and/or an order confirmation – such as illustrations and drawings or calculations – this information is non-binding unless it has been explicitly defined as such.

III. Price and Payment

1. In the absence of special agreement the prices are to be understood ex works, excluding packing and unloading. As far as applicable turnover-tax of individual legally applicable amount is added.
2. Payment is to be effected without any deduction, corresponding to the conditions agreed, to the account of the supplier. The customer will be in delay in case he did not pay without further explanations of the supplier 7 days after the due date.
3. The customer has the right to withhold payment or to offset against counter claims only in as far as his counter claims are undisputed or have been legally declared, or when based on claims on defect. In any such case the customer is only entitled to withhold payment as far as the amount withheld is in reasonable ratio to the defects and the expected costs for subsequent fulfillment (especially remedy of defects).

IV. Delivery Time, Delivery Delay

1. Delivery time results from the agreements made between the contractual parties. Preposition to adhere to same by the supplier is that all commercial and technical questions between the contractual parties have been settled, and that the customer has fulfilled all his obligations, such as for example procuring necessary certificates by authorities, or permits, or having rendered down-payment. Should this not be the case, delivery time is extended accordingly. This does not apply in case the supplier is responsible for the delay.
2. Adherence to delivery period is subject to correct and timely self-delivery. The supplier will inform about emerging delays as soon as possible.
3. Delivery time is kept when the object of delivery has left the supplier's works until its deadline, or readiness for dispatch was informed. In case acceptance has to be carried out, information of readiness for acceptance is decisive.
4. In case dispatch resp. acceptance of the delivery object is delayed for reasons, for which the customer is responsible, the costs arising due to the delay will be charged to him, starting one month after information of readiness for dispatch resp. readiness for acceptance. All other consequences of delay of acceptance (besides others # 6) remain untouched.
5. In case non-adherence of delivery time is due to act of God, industrial action, or any other event outside the scope of influence of the supplier, delivery time is extended reasonably. The supplier will inform the customer about start and ending of any such circumstances as quickly as possible.
6. a) The customer can withdraw from contract without setting a deadline, when the complete performance is definitely impossible for the supplier before passing of risk. Furthermore, the customer can withdraw from contract when performance of part of the delivery will become impossible, and when having a legitimate interest to reject partial delivery. Should this not be the case, the customer will have to pay the contractual price due for the partial delivery. Same applies in case of inability of the supplier. Otherwise section VII.2 applies.

b) In case impossibility or inability occurs during acceptance delay, or in case the customer is solely responsible for these circumstances or most predominantly, he is obliged to counter-performance.
7. a) In case the customer is granting the supplier a reasonable deadline for performance after due date – considering the legal exceptions – and when this deadline is not kept, the customer is entitled to withdraw within the scope of the legal provisions.

b) The supplier is liable for delay of performance in case of intention or gross negligence of the supplier or of a representative, or by a person employed by the debtor in the performance of his obligation, as well as in case of injuries to life by slight negligence, or of body or health as per the legal stipulations. However, supplier's liability in case of gross negligence is limited to the contract typical, foreseeable damage. Except for cases as per sentence 1 and sentence 2, supplier's liability due to delay, for compensation besides the performance is limited to a total of 3% of the delivery value per completed week of delay, max. 15% of the delivery value, and for compensation instead of performance (including replacement of expenditures in vain) to a total of 30% of the delivery value. All further claims of the customer are excluded – even after expiration of a deadline for performance granted to the supplier. This limitation does not apply in case of culpable infringement of fundamental contractual obligations. Claim for compensation for culpable infringement of fundamental contractual obligations, however, is limited to contract typical, foreseeable damage, in as far as there simultaneously isn't a further case as per sentence 1. Customer's right to withdraw from contract remains untouched. A change of onus of proof is not connected to the aforementioned regulations.

8. There are special agreements for taking back packaging.

V. Passing of Risk, Acceptance

1. Risk is passing to the customer when the object of delivery has left the works, also in case of partial deliveries, or when the supplier has taken over further performances, i.e. delivery costs, or supply, or installation. In as far as an acceptance is to be carried out, same is decisive for passing of risk. It is to be carried out immediately upon date for acceptance, alternatively after information by the supplier about readiness for acceptance. The customer may not refuse acceptance upon presence of a non-essential defect.
2. In case dispatch resp. acceptance is delayed or not occurring due to circumstances for which the supplier is not responsible, risk is passing over to the customer the day of information of readiness for dispatch resp. acceptance. The supplier is obliged to conclude the insurances asked for by the customer at the expense of the latter.
3. Partial deliveries are admissible, as far as reasonable for the customer.

VI. Retention of Title

1. The supplier reserves the property of the delivery object until receipt of all payments due out of the delivery contract. Should there be further requirements due to special regulations by the country, to which the purchased object is to be supplied to, the customer will fulfill same.
2. The customer is obliged to handle the purchased object with care; he is especially obliged to insure same sufficiently at the value when new, at his own expense, against damage by fire, water, and theft. In as far as maintenance and inspection jobs are required the customer has to carry out same timely at his own expense. The supplier is entitled to insure the object of delivery at customer's expense against theft, breakage, fire, water, and other damages, should the customer not prove having concluded such an insurance by himself.
3. Prior to complete payment the customer may neither sell, pledge, nor transfer ownership of the delivery object. In case of seizure of property as well as confiscation and other decrees by third parties he has to inform the supplier immediately.
4. In case of behavior in breach of contract by the customer, especially in case of delayed payment, the supplier is entitled to withdraw from contract and/or to take the delivery object back after having given notice as well as granting a reasonable period of grace, and the customer is obliged to handing over. The supplier is entitled to utilize the purchased object after take back; the utilization revenue is to be deducted from the liability of the customer – less reasonable utilization costs.
5. Customer's application for opening insolvency proceedings entitles the supplier to withdraw from contract, and to claim immediate return of the delivery object. The customer has to inform the supplier about such application immediately.
6. In case of seizure of property or other intervention by third parties the customer has to inform the supplier immediately in writing, so that the supplier can take legal action as per § 771 ZPO. In as far as the third party is not in position to reimburse the judicial and extra-judicial costs of legal action, the customer is liable for the loss occurred for the supplier.
7. The supplier is obliged to release the securities due to him upon request of the customer in as far as the realizable value of the securities is exceeding the claim to be secured by more than 10%. Selection of the securities to be released is up to the supplier.

VII. Deadlines

1. A bilateral declaration is always required for binding deadlines. The written order confirmation from Mehrer applies in their absence. Mehrer will only keep to the deadline if the contractual partner has delivered all the necessary documentation and information on time.
2. The delivery deadline only commences once technical and commercial details have been clarified.
3. If the shipment or delivery is delayed at the request of the contractual partner by more than one month following notification of a readiness for shipment by Mehrer, Mehrer can bill the contractual partner for storage costs amounting to 1% of the value of the goods agreed in the respective contract for every month commenced. The contractual parties are entitled to prove that the storage costs are higher or lower.

VIII. Claims of Defects

The supplier is granting warranty for hidden defects and defects in title – excluding further claims – subject to section VII. as follows:

Hidden Defects

Claims for defects are only existing when the customer has fulfilled his obligations as per § 377 HGB, and only in case of severe deviation from the agreed condition, or in case of severe impairment for suitability. The following applies for severe defects:-

1. As per supplier's choice all such parts are to be improved or to be replaced free of defect by him, which prove to be defective due to a circumstance occurring prior to passing of risk. The supplier is to be informed immediately in writing about ascertainment of such defect. Replaced parts will become property of the supplier. After agreement with the supplier the customer has to grant the supplier sufficient time and possibility to carry out all improvements and replacement deliveries seeming necessary to the supplier. Otherwise the supplier is relieved of the liability for consequences resulting thereby. In urgent cases of endangering industrial safety resp. to defend disproportionately large damages, about which the supplier is to be informed immediately, the customer is entitled to clear the defect himself or have same cleared by third parties, and to ask the supplier to reimburse the necessary expenditures.
2. The expenditures necessary for the purpose of improvement are borne by the supplier, as far as same are increasing because the deliveries are taken to another location than the subsidiary of the customer, unless introduction corresponds to its use in accordance with the regulations. Application of § 478 BGB remains untouched. Irrespective of further claims of the firm accepting the order, the party ordering has to reimburse the expenditures for checking and – as far as demanded – for clearing the defect in case of unjustified complaint.

3. Within the scope of statutory regulations the customer has the right to withdraw from contract, in case the supplier – considering the legal exceptions – ineffectually let pass a reasonable deadline for improvement or replacement supply due to material defect. The right for reduction of contractual price remains excluded.

Further claims are settled by section VII.2 of these conditions.

4. No warranty is granted especially in the following cases:

Unsuitable or improper handling, faulty assembly resp. taking into operation by the customer or by third parties, natural wear, faulty or negligent handling, improper service, unsuitable means of operation, faulty erection, chemical, electro-chemical or electrical influences – as long as these are not the responsibility of the supplier.

5. In case the customer or third party is improperly improving, the supplier will not be liable for consequences resulting thereby. Same applies for changes of the delivery object made without the prior consent of the supplier.

Defects in Title

6. In case use of the delivery object is resulting in infringement of industrial property rights or copyrights, the supplier, at his expense, will generally procure the right of further use by the customer, or he will modify the delivery object reasonably for the customer in a way, that there won't be any infringement of property rights.
7. In case this will not be possible at economically reasonable conditions or within reasonable time, the customer is entitled to withdraw from contract. Under the circumstances mentioned, the supplier has the right to withdraw from contract. Furthermore, the supplier will release the customer from undisputed claims or claims having become res judicata by the holder of the property right concerned.
8. The obligations of the supplier laid down in these conditions are final in case of infringement of industrial property rights or copyrights.

They only exist, when

- the customer informs the supplier immediately upon assertion of infringement of industrial property rights or copyrights;
- the customer is supporting the supplier in reasonable extent to defend the claims raised resp. enables the supplier to carry out the modification measures;
- all defense measures, including regulations out of court have been made possible for the supplier;
- the defect in title is not due to a direction made by the customer;
- the defect in title was not caused by arbitrary change of the delivery object by the customer or use by same in a way non-conforming to contract.

IX. Liability

1. For damages having occurred
 - at the delivery object or
 - not directly at the delivery object itself, the supplier is liable for whichever legal ground only in case of:
 - a. intent;
 - b. gross negligence of the owner/executive body or person employed by the debtor in the performance of his obligation. Liability of the firm accepting the order is in case of gross negligence limited to contract typical, foreseeable damages, in as far as there simultaneously isn't any other case of exception mentioned in this number.
 - c. culpable injury of life, body, health;
 - d. defects he fraudulently failed to disclose, or the existence of same he guaranteed;
 - e. stipulations of the product liability law (ProdHaftG);
 - f. culpable infringement of essential contractual obligations. Claiming damages for infringement of essential contractual obligations, however, is limited to contract typical, foreseeable damage, in as far as there simultaneously isn't any other case of exception mentioned in this number.Further claims are excluded.
2. The regulations of aforementioned paragraph 2 are applicable for all claims of damages (especially for damage besides the performance and damage instead of performance), no matter on which legal ground, especially because of defects, such as infringement of obligations or infringement of obligations from tortious act. They are also applicable for the claim for reimbursement of expenditures in vain. However, liability for delay is specified in number III 7 of these conditions, liability for impossibility is as per number III 6 of these conditions.
3. Liability for claim exceeding the specifications of number VII as well as number VIII 6, 7 is excluded – irrespective of legal nature of the claim having been put forward. This especially applies for damage claims by fault upon contract conclusion, because of any other neglect of one's duty, or because of claims in tort of material damage as per § 823 BGB. These limitations are also applicable in as far as the customer is claiming replacement of useless expenditures instead of claiming replacement of the damage. In as far as liability for damage claim versus the supplier is excluded or limited, this is also applicable with regard to personal liability for damage claim by employees, working force, staff members, representatives and persons employed by the debtor in the performance of the obligations of the supplier.
4. Change of onus of proof is not connected to the aforementioned regulations.

X. Limitation of Action

1. Limitation period for claims and rights due to defects of delivery – for whichever legal ground – is one year. This, however, does not apply in cases of § 438 para. 1 no. 1 BGB, § 438 para. 1 no 2 BGB, § 479 para. 1 BGB or § 634 a para. 1 no. 2 BGB. Cases excepted in aforementioned sentence 2 are subject to a limitation period of 3 years.
2. Limitation periods as per para. 1 are also applicable for all damage claims versus the firm accepting the order being in connection with the defect – independent of legal ground of the claim. In as far as there are damage claims of any kind versus the firm accepting the order, not being in connection with the defect, limitation period of para. 1 sentence 1 is applicable.
3. Limitation periods as per para. 1 and para. 2 are, however, applicable provided that:
 - a) Limitation periods are generally not applicable in case of intent or fraudulent non-disclosure of a defect, or as far as the firm accepting the order has taken over guarantee for the condition of the delivery object.
 - b) Limitation periods for damage claims are furthermore not applicable in case of gross breach of duty, in case of culpable infringement of essential contractual obligations – not consisting of the delivery of a defective object , in cases of injury of life, of body, or health, or in case of claims as per Product Liability Law. The limitation periods for damage claims are also applicable for reimbursement of expenditures in vain.
4. For all claims the limitation period starts upon delivery – in case of acceptance upon same. Otherwise all other legal stipulations concerning start of limitation period, tolling of the statute of limitations, hindrance and re-start of period of time remain untouched.
5. Limitation period in case of recovery over delivery as per §§ 478, 479 BGB remains untouched.
6. Change of onus of proof is not connected to the aforementioned regulations.

XI. Utilization of Software

In as far as software is included in the delivery scope the customer is granted a non-exclusive right to use the software supplied on a system, including its documentation. It is left for use on the delivery object defined. Use of the software beyond this definition is prohibited. The parties agree that it is impossible to develop a software program in a way that same will be faultless for all application conditions.

The customer may copy, revise, translate, or change from object code into source code only within the legally admitted scope (para. 69 a flwlg. UrhG). The customer is obliged

not to remove or change manufacturer's data – especially copyright information – without the expressive prior consent of the supplier.

All other rights of the software and documentations, including copies, remain with the supplier resp. with the software supplier. Granting sub-licenses is not admissible.

XII. Applicable Law, Place of Jurisdiction

1. For all legal relationships between the supplier and the customer the law of the Federal Republic of Germany is exclusively applicable, excluding UN-Convention on Contracts for the International Sale of Goods.
2. Place of jurisdiction is the court competent for the registered office of the supplier. The supplier, however, is entitled to take legal action at the main registered office of the customer.

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