

# General Terms of Delivery

For Sales and Deliveries

Institut Dr. Foerster GmbH & Co.



## Scope of validity

- 1) Quotations of the supplier as well as sales and deliveries shall be realized exclusively pursuant to the latest respective version of these general terms of delivery. They shall apply for all future business transactions, even if they have not been expressly confirmed.
- 2) We hereby object to order confirmations referring to deviating terms of delivery or purchase. Silence on the part of the supplier in respect to the conditions of the purchaser, shall under no circumstances be considered as consent or recognition.
- 3) Deviations from the present terms of delivery shall only apply if confirmed in writing by the supplier.

## I. Offers and conclusion of a contract

- 1) Our quotations are made without obligation and may therefore be revoked at any time before and two working days after the purchaser has accepted the quotation.
- 2) The purchaser is bound by his order for 14 days. The supplier may accept the order in writing, by telex, by telefax or Long Distance Data Transmittal, unless the supplier immediately effects delivery or sends an invoice.
- 3) The details given in the supplier's specifications shall determine the quality of the products or services, which is owed by the supplier.  
If the specification does not indicate the working life of parts subject to wear and tear, the usual working life of such parts shall apply. The usual working life depends on the extent of utilization of these parts (single-shift or multi-shift operation).  
Should no particular specification of the products or services exist, the supplier's order confirmation shall be considered as specification.  
Protective facilities shall only be included with the delivery if expressly agreed upon in detail.  
For all deliveries and services, the specifications of the Association of German Electrical Engineers, in so far as these are applicable with respect to the level of safety of services or deliveries, shall apply. Deviations shall be permissible if the same degree of safety is guaranteed otherwise.  
In catalogs, brochures, circulars, advertisements, illustrations and price lists, specifications shall not be binding unless they have expressly become part of the contract.
- 4) Details mentioned in the supplier's specifications which relate to the quality of the products or services do not constitute any guarantees, particularly no guarantees as to the durability.

Information regarding the scope of services and deliveries do not constitute any warranty of the supplier to assume the risk of availability of sub-suppliers. The supplier reserves the right to claim, that he was not correctly or timely supplied himself by his supplier.

Any guarantee or any warranty as to the availability of the products or their components requires an express written agreement between the parties, in which the terms "guarantee" or "risk of availability" are expressly used.

- 5) In so far as the supplier does not expressly assume responsibility for installation this responsibility lies with the purchaser. Drawings handed over by the supplier or other notes regarding installation of the products are no installation instructions but only information as to the measurements of the product and to the location where the product can be installed.

## II. Prices

- 1) Unless otherwise expressly agreed, prices shall be net prices ex works excluding packing.
- 2) Orders for which fixed prices are not expressly agreed upon shall be invoiced at the list prices in effect on the date of delivery.

## III. Retention of title

- 1) Delivered goods shall remain the property of the supplier until all outstanding debts resulting from the business relationship between the supplier and the purchaser are completely paid. Only receipt of the full sum by the supplier shall be considered as payment.
- 2) Unless other contractual provisions restrict the purchaser's rights of reselling the delivered goods, he shall only be entitled to resell the goods subject to reservation of title within his normal business; however, he shall not be entitled to pledge or assign the goods as security. The purchaser is obliged to secure the rights of the supplier when reselling the goods on credit.
- 3) The outstandings of the purchaser from resale of the goods subject to reservation of title shall be considered to have already been assigned by the purchaser to the supplier at this very moment; the supplier accepts this assignment. Notwithstanding this assignment and the supplier's collection rights, the purchaser shall be entitled to collect the outstandings as long as he fulfills his obligations towards the supplier and as long as he does not suffer illiquidity. At the request of the supplier, the purchaser shall inform the supplier of all details concerning the assigned outstandings necessary for collection and shall inform his debtors of the assignment.

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- 4) If the good subject to retention of title are resold together with other goods, irrespective of whether they are sold without or after processing, combination, mixing or merging with other goods, the above agreed assignment of future outstandings be in the amount of the invoiced value of the goods subject to retention of title which have been resold together with other goods.
- 5) The purchaser shall inform the supplier immediately of execution measures of third parties in respect of the reserved goods or outstandings already assigned and shall provide him with the documents necessary for intervention.
- 6) If the purchaser is in default with his payments twice within 6 months or the purchaser is insolvent or objective criteria indicate his insolvency, the supplier shall be entitled to claim the delivered goods back and, in case of resale of the goods, the supplier shall be entitled to collect the assigned outstandings directly from the purchaser's customer. The supplier may claim the return of the delivered goods only if he has cancelled the contract. The right to claim damages besides the cancellation of the contract remains unaffected.
- 7) The supplier shall be obliged to release, at the request of the purchaser and at his own discretion, the security to which he is entitled, should the value of such security exceed the claims to be secured by at least 10%.
- 8) The purchaser shall be obliged to insure, at his own expense, the reserved goods against theft, breakage, fire, water and other damage.

#### IV. Terms of payment

- 1) Payments shall become due on the agreed time for payment. If no date for payment has been fixed, payments will become due upon receipt of the invoice or an equivalent statement of account. Should the date of receipt of the invoice or the statement of account be uncertain, payments will become due upon receipt of our services or deliveries.
- 2) On the basis of any counterclaims, the purchaser shall not be entitled to retain payments or offset them against claims of supplier unless such counterclaims have been recognized by the supplier or finally stated by a court of law.

#### V. Delivery, default and non-performance Term of Delivery

- 1) The term of delivery shall be the delivery date fixed in the order confirmation. Should all documents, necessary approvals and release documents to be supplied by the purchaser not be produced at least one month before the term of delivery, said term of delivery shall

be extended by one month, starting with the date on which all above-mentioned documents, necessary approvals and release documents have been completely received by us.

- 2) The term of delivery shall be considered as having been met if the goods have left the factory within the agreed term of delivery, or, if the purchaser is obliged to collection, the supplier has informed the purchaser about his readiness for shipment.
- 3) Unless otherwise agreed, in case of supply contracts on call the purchaser is obliged to fix in advance supply units for at least six months and to call these supply units timely before each term of delivery. Should the purchaser not meet this obligation, the supplier, after having fixed a reasonable time limit, shall be entitled to make the division and/or the call himself, to deliver the goods or to cancel the contract. His right to demand damages for breach of contract shall not be affected by the cancellation.
- 4) Claims for compensation resulting from delay in delivery or from failure to perform cannot be asserted against the supplier unless they are based on wilful intent or gross negligence of the supplier, his managerial staff or persons employed by the supplier in the performance of his obligations. This limitation on liability does not apply in case of breach of essential contractual obligations (cardinal obligations) attributable to the supplier.

If the supplier is liable for damages based on slight negligence (breach of cardinal obligations) the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit. This limitation on liability applies accordingly to gross negligence of persons employed by the supplier in the performance of his obligations.

Any possible right to cancellation of the contract, which the purchaser may have in these cases, remains unaffected by this limitation on liability.

- 5) Correct and timely supply of the supplier himself is reserved.
- 6) In the event of delay in accepting performance the purchaser has to indemnify the supplier for the loss caused by this breach of contract, in particular for expenses incurred by the storage of the goods. This does not apply if this breach of contract is not attributable to the purchaser. In this case the purchaser's obligation to reimburse costs is limited to the expenses incurred by the supplier due to the storage of the goods. After having fixed an adequate time limit for taking delivery without success, the supplier is further entitled to dispose otherwise of the goods and to supply the purchaser within a reasonably extended term.

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## VI. Force majeure

- 1) Should the supplier be prevented from fulfilling his obligations due to the occurrence of unforeseeable extraordinary circumstances, which he has not been able to prevent despite measures appropriate under the individual circumstances, e.g. stoppages, official intervention, delays in the delivery of essential raw materials or energy shortages, the term of delivery shall be extended by an appropriate period of time. Should performance of delivery become impossible due to the above-mentioned circumstances the supplier shall be released from his obligation to deliver. This provision applies accordingly in the event of lockouts or strikes.
- 2) If the above-mentioned circumstances persist for more than one month, both parties shall be entitled to cancel the contract with respect to the part not yet fulfilled. The purchaser is not entitled to claim damages from the supplier in these cases of force majeure. The supplier shall only be entitled to avail himself of the above-mentioned circumstances if he informs the purchaser about them immediately.

## VII. Passing of risk

- 1) Risks shall pass to the purchaser at the latest upon shipment of the ordered goods, even if partial shipments are made. At the request of the purchaser, the shipment shall be insured by the supplier, at the purchaser's expense, against theft, breakage, transport, fire and water damage as well as other insurable risks.
- 2) Should shipment be delayed at the request of the purchaser or for reasons which lie within his responsibility, risk shall pass to the purchaser from the date of readiness for shipment onwards, but the supplier shall be obliged to effect, at the request and expense of the purchaser, the insurances requested by the purchaser.

## VIII. Acceptance/notice of defect

- 1) The purchaser's obligation to examine the goods and to make a complaint in respect of a defect immediately on receipt is determined by article 377 Commercial Code.
- 2) In case larger quantities of the same goods are supplied, the delivery as a whole may only be rejected as being defective if the defects have been discovered by means of an accepted method of representative samples.

- 3) Delivered goods shall be accepted by the purchaser, even if they have negligible defects.
- 4) Partial deliveries shall be permissible.

## IX. Liability for defects/limitation period

- 1) If the delivered goods are defective or if certain conditions of the goods do not comply with a guarantee given by the supplier, the supplier shall at his choice repair the defective goods or replace them by goods free of defects.

Parts subject to wear and tear which have been free of defects at the passing of the risk and the working life of which is shorter than the limitation period provided for under section IX clause 4., may not be considered as being defective due to that shorter working life.

- 2) Should two efforts to remedy a defect fail, the purchaser shall be entitled, at his choice, to cancel the contract or to reduce the purchase price.

The purchaser can put forward indemnification for redhibitory defects in the event of intentional or gross breach of duty, in the event of wrongful breach of an essential contractual obligation (cardinal obligation), in the event of wrongful injury of life, body or health, in the event of fraudulent concealment of defects, in the event of liability in accordance with the liability for defective products' law or in the event of acceptance of guarantee for rework, new delivery or new performance.

If the supplier is liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit. This limitation on liability applies accordingly to gross negligence of persons employed by the supplier in the performance of his obligations.

- 3) Should the supplier chose to repair the defect, he shall bear the repair expenses. Additional expenses resulting from the fact that the purchaser moves the goods to be repaired to a place different from the purchaser's headquarters or the originally agreed delivery location shall be borne by the purchaser. In case the purchaser arranges for the repair his claim for reimbursement of costs is limited to the expenses which in fact relate to the supplier's part of delivery or services.
- 4) The regular limitation period for defective goods, which are usually not used for buildings, is 1 year from delivery of the goods at the purchaser.
- 5) In the event of rework, new delivery or new performance the statutory limitation continues invariably for

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the portion of the delivered goods which are not affected.

The statutory limitation for the part reworked or the new delivery and/or new performance shall be one (1) year starting from completion of the rework or new delivery and/or as from delivery of the new part to the purchaser. It shall be valid at least up to expiration of the guarantee period for the original object of delivery. If a damage claim can be raised against the supplier, reduction of the statutory limitation is excluded in the event of intentional or gross breach of duty, in the event of wrongful breach of an essential contractual obligation (cardinal obligation), in the event of wrongful injury of life, body or health, in the event of fraudulent concealment of defects, in the event of liability in accordance with the liability for defective products' law or in the event of acceptance of guarantee for rework, new delivery or new performance.

- 6) The purchaser has no claims in case of defects leading to no more than a negligible reduction of the value or fitness of the delivered goods. This limitation on liability does not apply to claims for damages for defects based on gross negligence or wilful intent or which lead to personal injury, injury to life or health.
- 7) If the delivered goods are second-hand goods, any liability for defects is excluded. This limitation on liability does not apply to claims for damages based on gross negligence or wilful intent, attributable breach of essential contractual obligations (cardinal obligations), as well as personal injury, injury to life or health attributable to the supplier, his managerial staff or persons employed by the supplier in the performance of his obligations.

### **X. Claims for compensation resulting from breaches of duties to protect**

- 1) The supplier's liability for defects as to quality and defects of title, default and non-performance are not affected by this section (X). The provisions of section V, IX and XI of these general terms of delivery apply to this kind of liability.
- 2) Claims for compensations resulting from other breaches of duties, particularly duties to protect interests warranting protection or obligations arising out of quasi-contractual relationships are excluded unless they are based on gross negligence or wilful intent, attributable breach of essential contractual obligations (cardinal obligations), or personal injury, injury to life or health caused by the supplier, his managerial staff or persons employed by the supplier in the performance of his obligations.

If the supplier is liable for damages based on slight negligence, the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit. This limitation on liability applies accordingly to gross negligence of persons employed by the supplier in the performance of his obligations.

- 3) The limitation on liability provided for under clause 2) applies accordingly to claims in tort.
- 4) Claims for compensation resulting from other breaches of duties under this section are subject to a limitation period of one year as of the end of the year, during which the claim arose and the purchaser obtained knowledge of the circumstances justifying the claim or his lack of such knowledge was due to gross negligence.

In so far as the supplier is liable for breach of duties to protect, this restriction of the limitation period does not apply in the event of intentional or gross breach of duty, in the event of wrongful breach of an essential contractual obligation (cardinal obligation), in the event of wrongful injury of life, body or health, in the event of fraudulent concealment of defects, in the event of liability in accordance with the liability for defective products' law or in the event of acceptance of guarantee for certain quality features.

### **XI. Intellectual property rights**

- 1) For claims resulting from the infringement of trademarks, patents, patent applications, utility models, registered designs or copyrights of third parties, a right to claims for compensation against the supplier, his executive body, managerial staff or persons employed by the supplier in the performance of his obligations is excluded, unless it is based on gross negligence or wilful intent of the supplier, his managerial staff or persons employed by the supplier in the performance of his obligations or the supplier has guaranteed that the above mentioned intellectual property rights will not be infringed.

This limitation on liability does not apply in case of breach of essential contractual obligations (cardinal obligations) attributable to the supplier, his managerial staff or persons employed by the supplier in the performance of his obligations.

If the supplier, his executive body, managerial staff or persons employed by the supplier in the performance of his obligations are liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit. This limitation on

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liability applies accordingly to gross negligence of persons employed by the supplier in the performance of his obligations.

- 2) The purchaser's right to cancel the contract due to the above mentioned infringement of intellectual property rights remains unaffected.

## **XII. Suspension of the limitation period due to negotiations**

Negotiations about liability for defects or other claims for damages shall only be considered to be in progress if the parties have stated in writing, that they are negotiating such claims. In case the pleading of this requirement of writing constitutes an abuse of legal rights, neither party may plead the observance of the requirement of writing.

## **XIII. Rights of property**

The supplier reserves unlimited rights of property and copyright for cost estimations, drawings and other documents; these may only be made accessible to third parties with the prior approval of the supplier. Drawings and other documents belonging to quotations shall be returned immediately on demand without keeping copies, if an order is not placed.

## **XIV. Applicable law, place of jurisdiction and validity of the contract**

- 1) These general terms of delivery and the whole contractual relationship between the supplier and the purchaser shall be subject to the law of the Federal Republic of Germany, excluding the UN-Convention on Contracts for the International Sale of Goods (CISG).
- 2) The place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship shall be Stuttgart or, at the discretion of the supplier, the place where the purchaser has his headquarters.
- 3) Even if individual clauses of these general terms of delivery or clauses which make part of other agreements between the parties should be or become legally invalid, the remaining parts shall remain valid. In case the legally invalid clause is no general term or condition, the parties shall be obliged to replace the invalid clause by a legally valid one which will best achieve the economic purpose of the original one in a legally valid manner.

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