



Delivery and Payment Terms

General Provisions

1. These delivery and payment terms shall govern all future offers, supply agreements and other services.
2. None of the Purchaser's terms and conditions which are differing from these terms and conditions shall be binding on us unless they have expressly been accepted in writing by our management; any acceptance by our employees who are not members of the management shall not be sufficient to bind us.
3. All agreements shall be made in writing. This shall apply to ancillary agreements and warranties as well as to later modifications of any agreement.
4. No rights and duties of the buyer under this sale agreement shall be transferred to any third party without our written permission.
5. These delivery and payment terms shall only apply to agreements entered into with business operations, public legal entities, and public separate estates.
6. Our terms shall at the latest be deemed to be accepted as exclusively applicable when the services or goods are received.

II. Offer, Acceptance, and Delivery

1. Our offers are made subject to change and shall not become binding until we have acknowledged any respective order in writing.
2. If we receive written orders, we shall be allowed a period of two weeks for accepting any such order. No agreement shall be deemed to be validly entered into until we have communicated a written declaration (acknowledgment of order) to our customer. Declarations made verbally by our employees shall not be binding for the time being.
3. If our timely performance of any contract is interfered with by disruptions of procurement, manufacture or deliveries -regardless if such disruptions affect us or our suppliers-, e.g., disruptions caused by mobilization, war, riot, non-issuance of an export permit, shortfall of energy, traffic interruptions, strike, lock-out, the time limit for delivery shall be reasonably extended.
4. Any manufacturing or delivery dates mentioned by us are subject to change unless otherwise agreed in writing.
5. We shall be released from our duty to make any delivery if our performance of any respective contract becomes impossible in whole or in part without our fault due to the circumstances mentioned under subsection 3 hereof.
6. We will notify the buyer immediately in writing of any interference described under subsection 3 hereof and of any impossibility described under subsection 5 hereof.
7. If any delivery to be performed by us is delayed due to circumstances we are responsible for, we will be liable for the damages proved to be caused to the buyer not to exceed .5% for each completed calendar week of the value of that portion of the delivery which could not be properly used due to the delayed completion of items included in the delivery the total of such damages not to exceed 5% of that portion of the total delivery which could not be put to proper use.
8. The buyer shall have no rights to rescind the respective agreement or to claim damages for non-performance due to delayed delivery unless the buyer has fixed us a reasonable extension of the original period after we had already been in default of delivery. An extension of the original period of up to 60 days shall be deemed to be reasonable. Our liability to compensate such damages shall in all cases be limited to those damages which could typically be expected to occur in the event of the concrete business transaction. Any claim for damages of the buyer shall be limited to 20% of the value of the delivery unless the delay of the delivery was caused by gross negligence.
9. If the buyer has defaulted payment of any prior delivery, we shall be entitled to withhold deliveries without being liable to compensate any damages possibly caused thereby.
10. We shall have the right to make deliveries by installments and to issue partial invoices to an extent which is reasonably acceptable for the buyer.

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III. Prices

1. The prices to be applied shall be those applicable on the day the delivery is made unless otherwise agreed. The prices shall be added the sales tax applicable on the day the delivery is made or the invoice is issued in the amount provided by statutory law.
2. The prices are quoted ex Hamburg exclusive of packaging.
3. We will separately invoice packaging and shipping charges and incidental services performed by us at the buyer's request.
4. If the buyer so requests, we will have the shipment covered by shipment insurance. The expenses of any such insurance shall be paid by the buyer.

IV. Payment

1. If the agreement does not provide otherwise, the purchase price and the price for the incidental services shall be payable upon receipt of the invoice. The buyer shall at the latest be held to be in default after the expiration of 30 days following receipt of the invoice. The remedy of defaulting the buyer by a dun letter remains unaffected thereby.
2. In the event that any payment date or payment by installments are agreed upon, the entire amount owing to us shall be immediately due for payment, regardless of the maturity date of any negotiated draft if there is sufficient doubt about the buyer's liquidity, especially, if the buyer defaults payment of an installment for more than 14 days, if the buyer suspends making payments or if an insolvency petition over the buyer's property and assets is filed.
3. Money orders, checks, and drafts are only accepted on the basis of a prior special agreement to that effect and then only as a tool of payment but not in lieu of payment, and on the further basis that all collection and discount expenses are charged to the buyer.
4. The buyer shall not set off any counterclaim against our payment claims unless that counterclaim is either uncontested or enforceable as a debt under an unappealable judgment. The buyer shall not assert a right to withhold any payment unless that right is based on claims of the buyer arising from the very same sale agreement our payment claim is based on.

V. Retention of Title

1. We retain ownership in the goods until all of the amounts owing to us under our business connection with the buyer, regardless of their legal basis, are paid in full. While this retention of title is in effect, the buyer shall maintain the purchased item in proper condition and buy insurance for the purchased item at the buyer's own expense.
2. Any treatment and processing of our goods is performed on our behalf in our capacity as maker thereof in terms of BGB¹ section 950 without any obligations of ours arising therefrom. The processed goods shall then be covered by the retention of title provided under subsection 1 hereof. In the event that the goods title to which is retained are processed, attached and confused by the buyer with other goods, we shall acquire a joint ownership interest in the new item equivalent to the value of the goods title to which is retained in proportion to the invoice value of the other goods used. The buyer is now, already, transferring to us the ownership interest in the new item the buyer is entitled to as far as it does not exceed the invoice value of the goods title to which is retained and the buyer shall keep the new item in its custody on our behalf, as a provision for the event that our ownership interest expires as a consequence of any such attachment or confusion. We hereby accept this transfer. Any joint ownership interest arising hereunder shall also be covered by the retention of title provided under subsection 1 hereof.

¹ Bürgerliches Gesetzbuch = German Civil Code

3. The buyer may resell the sold item in the ordinary course of the buyer's business. The buyer is neither be permitted to pledge, nor to mortgage the goods, however. The buyer shall secure our rights when reselling the goods title to which is retained on credit. With respect to any event of a resale, the buyer is now, already, assigning all claims in the amount of the respective invoice total including sales tax accruing to the buyer from any such resale against the buyer's customers or against third parties, and that shall apply regardless if the sold item has been sold prior or subsequent to being processed. We hereby accept this assignment. Even subsequently to their assignment, the buyer remains authorized to collect such claims. Our right to collect the claim ourselves remains unaffected thereof. We agree, however, not to collect the claim while the buyer duly meets its payment obligations by using the proceeds to pay us and does not default any payment, and in particular while no insolvency proceedings are filed for or while payments on the buyer's debts are not suspended. Should that be the case, however, we may demand that the buyer make the assigned claim and its debtor known to us, inform us of all the details required for collection of that claim, surrender the pertaining documents and disclose the assignment to the debtor (third party). In the event that the goods title to which is retained are sold by the buyer together with other goods not owned by us for a lump sum price, the assignment by the buyer shall only cover the amount including value added tax which we have invoiced to the buyer for the goods title to which is retained which are sold together with other goods.
4. In the event that the buyer's claims arising from any such resale are entered as an item into a current account, the buyer is now, already, also assigning to us its receivable balances against its customer under any such current account. The assignment shall be made in the amount of the resale price the goods title to which is retained are sold for, in no lesser amount, however, than in the amount invoiced to the buyer by us for the resold goods title to which is retained including value added tax.
5. While the retention of title is in effect, the buyer may possess and use the goods title to which is retained as long as the buyer meets its obligations under the retention of title according to the provisions of this section and does not default on any payment. Should the buyer default on any payment or fail to meet its obligations, we may reclaim the sold item from the buyer. The buyer shall surrender the sold item to us without undue delay regardless of any right to withhold the sold item unless such a right is based on the very same sale agreement our payment claim is based on. After the goods title to which is retained have been surrendered to us, we may liquidate the goods title to which is retained by selling them on the open market at the best achievable price and setting the proceeds off against the purchase price subsequently to having warned the buyer that we will do so and having fixed a reasonable period.
6. If the value of that collateral exceeds the amount of our claim by more than 20%, we will release a portion of the collateral of our choice equivalent to that excess upon a request by the buyer to that effect.
7. The buyer shall immediately notify us in writing if any third party seizes the goods title to which is retained or the claims assigned to us and the buyer shall support any intervention by us in every possible manner.
8. The buyer shall pay the cost of performing the abovementioned obligations to cooperate with us while we pursue all of our rights under the retention of title and also all expenditures made for the purpose of preserving and storing the goods.

VI. Packaging and Dispatch

1. The goods will be packaged according to standards which are customary in the industry and trade. The cost shall be paid by the buyer.
2. Materials for special packaging, inside packaging, packaging in boxes and replacement packaging, e.g., for equipment to be repaired which has been received without packaging, will be charged to the buyer at the cost price and will not be taken back by us.
3. Fees for rental containers will be charged extra.
4. If the buyer expressly requests a particular shipping method, we reserve the right to charge any additional cost incurred by us to the buyer.

VII. Passing of Risk

1. We have the goods shipped at the buyer's expense and risk. Even if we ship goods without freight charges because of a special agreement to that effect, the buyer shall be responsible for unloading the goods.
2. If the goods are shipped to the buyer upon the buyer's request, the risk of accidental destruction or accidental deterioration of the goods shall pass to the buyer when the hired carrier takes delivery of the goods, no later, however, than when the goods leave our works or the storage facility regardless whether the shipment is sent from the place of performance or who pays the freight.
3. If the goods are ready to be shipped and if the dispatch or acceptance of the goods is delayed due to circumstances we are not responsible for, the risk shall pass to the buyer when the buyer receives the notice that the goods are ready to be shipped.

VIII. Liability for defects and Damages

1. After having received the goods delivered by us, the buyer shall examine these goods without undue delay to the extent practicable in the due course of its business and notify us in writing without undue delay if any defect shows up.
2. In the event that the buyer fails to make these notifications, the goods shall be deemed to have been approved unless the respective defect was not identifiable during the examination of the goods.
3. This notification requirement also applies to short deliveries and wrong deliveries. Short deliveries and wrong deliveries shall also be given notice of to us without undue delay.
4. The limitation period for the warranty claims in terms of BGB section 438 subsection 1 item 3 shall be twelve months following receipt of the goods.
5. With regard to goods which have not been made by us, we have the right to assign the warranty claims and guaranty claims we have against the supplier to the buyer. The buyer shall accept this assignment and only assert claims against us if the assigned claims are not enforceable.
6. The buyer's rights shall be limited to either repair of the defect or delivery of a nondefective item (remedied performance) depending on the buyer's choice. If the buyer's performance fails to be remedied, the buyer has the right to either reduce the purchase price or to rescind the agreement.
7. The buyer shall generally have no other rights, in particular it shall have no right to claim compensation of consequential damages. This shall neither apply in the event of malicious intent, gross negligence or breach of any essential contractual duty nor in the event of any injury to the life, body or health of any person. The buyer's right to rescind the respective agreement remains unaffected thereby.
8. Should the defects complained of turn out to be nonexistent, the buyer shall pay the cost caused thereby.
9. The goods complained of shall be properly packaged before being sent to us.
10. We shall not be liable under any warranty if the condition of the goods is caused by any meddling with or modification of the delivered goods by any other party. Furthermore, we shall not be liable under any warranty if there are conditions which have been caused by fair wear and tear, faulty treatment or negligent mistreatment, improper operating materials or extraordinary operating conditions. Moreover, the buyer's warranty claims shall expire if the buyer fails to comply with our request to return the items complained of immediately.
11. We will only warrant procedural functions if such a warranty has been expressly made in writing.
12. We will provide consulting services to the best of our knowledge on the basis of our discoveries, without any liability, however. Any statement and information, transfer of ownership and application or use of the purchased item shall be non-obligatory unless expressly guaranteed in writing. No such information shall excuse the buyer from performing its own examination of the goods.
13. As of the very beginning, the buyer shall have the full burden of proof for all requirements the buyer's claim depends on, in particular for the existence of a defect at the time the risk passed to the buyer.
14. After the delivered goods have been commenced to be processed or attached to other items, defects shall not be complained of unless the buyer proves that the goods delivered by us were already defective before the goods were processed or attached to the other item.



IX. Export Regulations

1. If the products are exported, the buyer shall observe the export regulations applicable in Germany and, as the case may be, in the country of manufacture and in the destination country, and the buyer shall invite the attention of its customers to the fact that the export regulations of Germany and, as the case may be, of other countries involved, apply.
2. The buyer agrees to make the information required for obtaining an importing permit or an exporting permit already available in the order.
3. We assume no responsibility in connection with any import or export. The buyer itself has to make sure that the regulations to be observed are complied with.

X. Customs Clearance

If any delivery is forwarded with duties unpaid at the buyer's request, the customer shall be liable for any supplementary duty payments required by the customs authorities.

XI. Other Damages / Limitation of Liability

1. We shall not be liable for property damages if such damages are caused by an ordinarily negligent breach of secondary contractual duties which do not jeopardize the objective of the agreement. This shall especially apply if the damage which has occurred is covered by an insurance policy of the buyer.
2. Our liability for damages shall be limited to property damages and physical injuries regardless of the legal basis of the claims asserted against us.
3. Except for the case of malicious intent, our liability shall only cover damages which are typically to be expected as a consequence of the transaction in question.
4. If our liability is disclaimed or limited, such disclaimer or limitation also applies to the personal liability of our clerks, employees, staff members, representatives, and vicarious agents.
5. Any damages the buyer may claim as a result of any defect in terms of section VIII. hereof shall expire by limitation after the expiration of twelve months as of the delivery of the goods. This shall not apply if we can be held accountable for gross negligence and in the event of our accountability for physical injuries and damages to a person's health or in the event of the loss of a person's life.
6. The above limitations of our liability do not apply to claims based on the Produkthaftungsgesetz² (ProdHaftG sections 1,4).
7. Our customer is aware that we purchase some of our goods abroad, mainly in the United States of America. Therefore, our customer also knows that problems with exporting goods from the United States of America may occur from time to time. We shall not be liable if we do not receive the goods ordered by the customer as a consequence of such export problems. After having exhausted the means available to us, we shall have the right to rescind the agreement without any claims for damages accruing to the buyer as a result thereof.
8. We shall not be liable to the buyer for the nonexistence of any third party (intellectual property) rights in the delivered goods. If the goods to be delivered are subject to any rights under patents, utility models or design models or similar third party rights, we do not warrant to the buyer that the goods are free from such rights. We shall be exempt from any liability.

We are not subject to any obligation of verifying the existence of such rights.

XII. Identification of the Goods, Observance of Patents

The buyer shall neither be permitted to modify the goods, nor to remove any machine number or identification plate, nor to use any identification marks which are held to be marks of origin or which might make the goods look like specialty product.

² German Product Liability Code



XIII. Miscellaneous

1. This agreement is governed by the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on the International Sale of Goods do not apply.
2. The registered office of our company shall be the only place of performance for all of our obligations towards the buyer under the contractual relationship including our warranty obligations.
3. The registered office of our company shall be the exclusive place of jurisdiction and venue for all disputes arising under this agreement, including draft enforcement proceedings and check enforcement proceedings. The same shall apply if the buyer has no legal general venue in Germany or if the buyer's domicile or ordinary residence at the time any action is brought is unknown.
4. If any one of these provisions is or becomes invalid, then that invalidity does not affect the validity of the other provisions.

H3T Enterprises GmbH

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Due to the statutory provisions of the Federal Republic of Germany and, as the case may be, of the respective country of manufacture, the export of the goods delivered by us generally requires a permit.