

General Terms and Conditions of Delivery, Payment and Assembly

A General Terms and Conditions of Delivery and Payment

I. General, Scope:

- Our General Terms and Conditions of Delivery and Payment (General Conditions) shall apply exclusively. This applies to all business transactions entered into by the Company (e.g. material supplies and services). Unless otherwise previously agreed to in writing, the Company shall neither recognise nor take into account the existence of any conflicting or varying conditions as may be contained in customers' conditions. These General Conditions shall apply in all events where the Company undertakes to unreservedly execute delivery or supply other performances, even when aware of the existence of conflicting or varying conditions.
- The Company's General Conditions shall only be binding upon its customers within the meaning of § 310 Abs. 1 BGB (German Civil Code - Bürgerliches Gesetzbuch).
- The Company's General Conditions shall apply to all future business transactions with the customer.
- Insofar as matters are not regulated in these General Conditions the statutory provisions in force shall apply.

II. Offers / Tender Documents

- Offers/tenders submitted by the Company are legally non-binding, unless provided for otherwise in the acceptance of order.
- The Company retains the right of ownership and copyright on any and all reproductions, drawings, calculations and other documents. The customer must obtain the Company's prior and express written consent before passing on any such documents to third parties.
- The content and scope of the Company's services, as well as the conditions under which the Company provides its services, arise out of the Company's offer letter. It will be the sole responsibility of the customer to check that the assumptions made in the Company's offer letter are complete and correct. The customer shall immediately and in any event before execution of the services point out to the Company any incorrect assumptions in the Company's offer letter. As far as the Company's assumptions are incorrect, the Company reserves the right to make any necessary changes to its offer letter. This is particularly applicable in respect of the scope of services, prices, dates or in other circumstances.

III. Prices / Terms of Payment

- Unless provided for otherwise in the Company's order confirmation, all prices quoted by the Company are „ex works“, excluding packing and shall be invoiced separately.
- The Company reserves the right to amend its prices as a consequence of cost reductions or cost increases that may come into effect following the conclusion of contract, especially in the event of collective agreements or changes in the prices of raw materials. Upon the customer's request the Company shall provide evidence to substantiate any such amendments.
- All applicable taxes, in particular value-added tax are excluded from the Company's prices. Value-added tax is to be paid at the rate applicable on the date of the invoice.
- Any deductions for discounts are subject to prior written approval.
- Unless otherwise provided for in the order confirmation, net payment (without deductions) is due within 14 days of the date of the invoice.
- The customer shall only have a right to set off amounts in the event its counterclaim has been legally established, is undisputed and recognised by the Company. In addition, the customer is only entitled to exercise a right of retention if its counterclaim is based on the same contractual agreement.
- If the Company accepts Bills of Exchange or cheques, the acceptance will only occur on account of performance. The resulting costs hereof shall be borne by the customer. Moreover, the Company accepts no responsibility for the due presentation or filing of the protest.

IV. Delivery, Period of Delivery

- Negotiated dates of delivery and assembly shall be binding on the Company solely in the event that all details of the order have been clarified in full.
- The Company strives to provide the goods and services within the agreed scheduled referred to in its offer. Nevertheless, the delivery or completion dates stated are always approximately and are not contractually binding. In so far that delivery and completion dates are not expressly agreed, the goods and services will be provided within a reasonable period of time from when ordered.
- Unless stated in the order confirmation, delivery shall be "ex works".
- Should the customer default in acceptance or culpably fail to comply with any other obligations to cooperate, the Company shall be entitled to claim for any damages that may be incurred, including additional expenses. The Company reserves the right to claim for further demands. Rights arising from § 642 BGB shall remain unaffected.
- In the eventuality of an event pursuant with item 3 above, the risk of incidental loss or deterioration of the item of purchase passes to the customer at the moment the act of default in acceptance or payment occurs.
- The Company is liable in accordance with the legal requirements insofar the underlying sales contract constitutes a fixed-date purchase in the meaning of § 286 Abs. 2 Nr. 4 BGB or of § 376 HGB (German Commercial Code - Handelsgesetzbuch). The Company is also liable in accordance with the legal requirements in the event of default of delivery on its part, insofar as a result thereof the customer may be entitled to claim loss of interest in further fulfillment of contract.
- The Company shall also be liable in accordance with the legal requirements insofar as default of delivery may result from breach of duty to perform arising from intention or gross negligence on its part; the Company shall be liable for faults on the part of any of its agents or other persons employed in performing its obligations. Insofar that the default of delivery does not arise from any deliberate breach of duty to perform on its part the Company's liability for damages shall be limited to the predictable damages as may typically occur.
- The Company shall also be liable in accordance with the legal requirements in the event that default of delivery may be due to a fundamental breach of contract on its part; also in such an event the Company's liability for damages shall be limited to the predictable damages as may typically occur.
- In all other cases, in the event of default of delivery the Company shall be liable to the customer for damages in the maximum amount of 15% of the contractual amount.
- Further legal claims and rights accruing to the customer remain unaffected.
- In the event that the customer changes agreed delivery or completion date(s), it shall solely bear all costs and expenses resulting thereof. In addition further compensation claims also remain unaffected therefor.

V. Passing of Risk / Packing Costs

- Transfer of the risk to the customer occurs immediately upon the sending of a message indicating the goods to be delivered are ready for collection.
- Under the terms of the German Laws concerning Packaging (Verpackungsordnung), transport packing and other packing materials will not be taken back; with the exception of pallets. The customer is obliged to arrange for the disposal of such items at his own expense.

VI. Warranties / Joint and Several Liability / Limitation

- The Company confirm that:
 - it applies the necessary care based on accepted engineering standards when delivering services;
 - that at the time of placing the bid no rights of any third parties are known to us which could hinder our delivery or performance.
- In the event that the provisions in the above mentioned section VI 1.b is not maintained the Company, the Company shall be entitled at its own expense, at its own discretion to undertake the below mentioned alternatives which are respectively the sole legal consequences of the aforementioned offense:
 - to adapt the usage rights regarding the supply and services to be provided by us so that it can continue such use; or
 - to make modifications, changes or adjustments to our deliveries and services in such a way that a violation of third party rights has not occurred and does not provide a significant reduction in performance and function; or
 - agree to replace the goods and services by others (replacement/compensation), provided the replacement does not significantly reduce the performance and function.
- The customer warrants that he is the owner of the rights for the goods and services to be provided and the use of the agreed goods and services do not attract any third party rights.
- In the event that the customer fails to fulfill its obligation under the foregoing VI, paragraph 3, the Company at its sole discretion and without prejudice to any other rights that it may have the right to refuse service. The customer shall not derive any further rights. The customer is obliged within a maximum period of 14 days to either:
 - Supply the Company with the relevant rights in respect to the delivery and services supplied, or
 - to make modifications, changes or adjustments to our deliveries and services in such a way that a violation of third party rights does not provide a significant reduction in performance and function of the delivery and services to be provided; or
 - replace the goods and services by others (replacement/compensation), provided the replacement does not significantly reduce the performance and function.

Insofar delivery dates have been agreed, the customer shall be liable for the costs incurred by the Company as a result of the interruption to the delivery and services. Should the customer not be in violation of VI no. 4 a, b or c, the Company shall be entitled to terminate the business relationship with respect to the services to be provided.

- The rights of the customer with regard to defects are subject to the correct observance of his duties regarding inspection and lodging of complaint pursuant to § 377 HGB.
- The Company guarantees that its material and services comply with the intended use mentioned in the offer alone. Furthermore, the Company does not guarantee that its material and services are suitable for the purpose of the customer. The customer acknowledges that this is his sole responsibility. To the extent nothing else is mentioned in these general terms and conditions of delivery and to the extent permitted by applicable law all warranty rights are fully excluded.
- The Company is not liable for damage or delays caused by the use of yet to be tested material. The Company is not liable for further deterioration or delays due to defects caused by normal wear and tear, improper use or by changing of the Company's goods and services. The same applies to the extent that any repair is not done by the Company.
- In the event of defects concerning the delivered item of purchase the Company may at its discretion choose either to remedy the matter by way of removing the defects, or by way of supplying additional goods being free from defects. In the event that the defects are to be removed, the Company shall bear all expenses involved, to include in particular the costs of transport, travel expenses, labour and materials, always provided that such costs are not increased due to the item of purchase being removed to a location other than the place of fulfillment.
- If the removal of defects and/ or delivery fails, the customer may elect at his discretion either to withdraw from the contract or to claim for a reduction of purchase price.
- The Company shall be liable in accordance with the legal requirements insofar that the customer claims for damages arising from intention or gross negligence on the part of the Company, any of its agents or other persons employed in performing its obligations. Insofar that the Company is guilty of gross negligence the Company's liability for damages shall be limited to the predictable damages as may typically occur.
- The Company shall be liable in accordance with the legal requirements in the event there has been a fundamental breach of contract on its part, in such an event the Company's liability for damages shall be limited to the predictable damages as may typically occur.
- Liability with regard to culpable disregard of life, body or health remains unaffected; this shall also apply to mandatory liability pursuant to the law of product liability (Produkthaftungsgesetz).
- The Company shall not accept liability in any cases other than those stated in the foregoing.
- The Company shall not accept any additional liability for damages - regardless of the legal nature of claims - other than that stated in Items 1-13 in the foregoing. This shall apply in particular to claims for damages arising from fault during conclusion of contract, or from other violation/derelection of duties, or for damages based on tortious claims pursuant to § 823 BGB.
- The limitations in paragraph 14 also apply if the customer demands reimbursement of useless expenditure instead of a claim for compensation.
- Insofar as the Company is excluded from liability for damages, this shall also apply to the personal liability for damages on the part of our employees, workers, co-workers, agents and all other persons employed in fulfilling the Company's contractual obligations.
- The period of limitation within which a customer must lodge any claims based on warranty for defects that do not fall under the provisions of § 438 Abs. 1 Nr. 2 BGB shall be one year after delivery of the item of purchase.
- The Company does not provide its customers with guarantees in the legal sense.
- Public statements, recommendations or advertising on the part of manufacturers shall not constitute quality descriptions conformable to the contract.
- Should during the performance of the services or at a later stage a design error emerge the Company will do its best to solve the problem at the Company's own expense.

VII. Retention of Title to Ownership

- The Company retains title to ownership of the item of purchase until such time as all outstanding payments within its open account relationship (business relationship) with the customer have been received; this proviso refers to the acknowledged balance of account. In the event that the customer is in violation of contract, in particular with regard to default of payment, the Company shall be entitled to set a deadline for remedy of such violation and upon its expiry to repossess the item of purchase. Repossession of the item of purchase on the part of the Company shall constitute withdrawal from contract. Following repossession, the Company shall be entitled to realise the value of the item of purchase, in which case the proceeds shall be set off against outstanding receivables, less a reasonable amount to cover the cost of realisation.
- The customer shall ensure that the item of purchase is well cared for; in particular the customer shall obtain adequate insurance at his own cost to provide cover against damage by fire, water and theft. Insofar as maintenance and inspection may be necessary, the customer agrees to conduct such work as and when necessary and at his own cost.
- In the event of distraints or any other act of intervention on the part of third parties, the customer has to inform the Company in writing without delay so that legal proceedings may be instigated pursuant to § 771 ZPO (German Code of Civil Procedure - Zivilprozessordnung). In the event that a third party may not be able to refund to the Company any court costs or extrajudicial costs arising from such civil proceedings the customer shall be liable to compensate the Company for the amount in question.
- The customer shall be entitled to resell the item of purchase in the normal course of business; in such event, however, the customer shall assign to the Company all receivables in the amount of the total invoice amount (including value-added tax) outstanding to the Company accruing to him from the resale to his customer or third parties. This shall apply in all such cases, irrespective of whether item of purchase is resold with or without reprocessing. Such assignment shall not affect the customer's right to collect the receivables due. The entitlement of the Company to collect such receivables for its own part remains unaffected. However, provided that the customer fulfills his duties to pay the amounts due from the resale and provided that he does not file for bankruptcy or any similar procedure, and that there has been no stoppage of payment, the Company shall refrain from collecting any amounts itself. Should one of the foregoing eventualities materialise, however, the Company may demand of the customer that he divulge the assigned receivables and the debtor, furnish all the details necessary to enable collection, including all the necessary documents, and inform the debtor (third parties) of the assignment.
- Any processing or redesign of the item of purchase on the part of the customer is always done for the Company. In the event that the item of purchase is processed with anything not belonging to the Company, the Company shall automatically have joint ownership of the whole item in relation to the value of the item of purchase (total invoice amount including value-added tax) to the other processed objects from the time they are processed. Furthermore, the regulations concerning the item of purchase being delivered with reservation even applies to the new item arising from processing.
- In the event that the item of purchase is incorporated with anything not belonging to the Company, the Company shall automatically have joint ownership of the whole item in relation to the value of the item of purchase (total invoice amount including value-added tax) to the other additional fittings from the time they are incorporated in the item of purchase. Should such fittings be incorporated in a manner that the customer's facility is deemed to be the main facility it is taken as agreed that the customer shall transfer ownership proportionally to the Company. The customer shall keep the subsequently created sole ownership or joint ownership in safe custody on the Company's behalf.
- By way of security for receivables due, the customer shall assign to the Company any receivables due to him from third parties by virtue of the connection of the item of purchase with real estates.
- At the customer's request the Company undertakes to release securities at such time as their realisable value exceeds the secured amount by more than 10%; the choice of securities that shall be released in such an event is at the discretion of the Company.

VIII. Industrial Property Rights of Third Parties

- In the event that the Company produces and supplies items and plant on the basis of particulars, drawings or models furnished by the customer it is up to the customer to ensure that industrial property rights of third parties are not violated. The customer shall indemnify the Company against third party claims and shall pay the cost of any damages awarded.
- In the event that a third party invokes their property rights and prohibits production, the Company shall be entitled to cease all work without prior investigation of the legal validity of the matter. The Company undertakes to notify the customer without delay.
- The customer is aware that the Company uses or applies its own know-how in the delivery of services. The customer does not have or shall acquire any rights to such know-how. In addition or rather he will not acquire any rights to improvements, enhancements, modifications or deviations of such know-how, which result from the contract, are made on the Company's behalf. All claims or rights in such information, its further developments, modifications, enhancements, or deviations are the Company's sole property. Should the customer require this information for the use of the goods and services to be provided by the Company, it shall have a simple right of use only of this information for internal use i.e. only in the region of its own business operations, permitted.
- The intellectual property rights and copyrights to all reproductions, drawings or other documents shall remain the Company's property. The customer must obtain the Company's prior express written consent before transferring any of its document to third parties.

IX. Place of Jurisdiction / Applicable Law

- Insofar as the customer is a merchant or a company the Company's choice of place of jurisdiction is its place of business, Bremen, or the place of business of the contracting branch office; the Company remains entitled at its discretion to elect jurisdiction at the customer's place of business/residence.
- Contracts shall be governed by the law of the Federal Republic of Germany, specifically excluding §§ 27 ff. EGBGB (Einführungsgesetz zum Bürgerlichen Gesetzbuch). The UN Convention on Contracts for the International Sale of Goods (CISG) shall not find application. In particular, the legal regulations of the German Civil Code (Bürgerliches Gesetzbuch) and the German Commercial Code (Handelsgesetzbuch) are applicable.

B General Terms of Assembly

In the event that the Company also undertakes to carry out assembly work and similar activities, whether or not in addition to supplying the item of purchase, the following terms of assembly shall apply in connection with the General Terms and Conditions of Delivery and Payment, respectively supplementary to the latter. The regulations stipulated in A I. apply accordingly:

I. Prerequisites for Assembly

The customer is to ensure that at the agreed time for the start of assembly work all the structural conditions on site are in place to enable unhindered and smooth assembly. Subject to the condition that all the contractually agreed conditions provided by the customer are fulfilled, the Company undertakes to carry out uninterrupted and continuous installation. In the event that in this respect delays or obstructions occur through no fault of the Company, the Company reserves the right to invoice separately for any additional costs incurred. The prerequisite for the start of assembly work are normal site conditions that enable unhindered execution without any extra work needing to be carried out.

II. Invoicing

1. In the case of insulation, the basis for calculation is the clear space of the room prior to installation. Borders, stringers, walls, columns and the similar are measured over the insulation. Vents measuring less than 0.5m² are not deducted.
2. Extra work that is not included in the contractual agreements and becomes necessary during installation through no fault of the Company will be invoiced separately. This shall also apply to any additional work requested by the customer and subsequently agreed extra performances.
3. The customer is to countersign work and materials slips on presentation. Should the customer refuse to countersign, the Company shall be entitled to interrupt the assembly work until such time as the matter is clarified. This shall not lead to any claims on the part of the customer against the Company. The customer shall reimburse the Company for any costs or disadvantages that may result from such an event.

III. Acceptance

1. On completion of the assembly work the customer is entitled as well as obliged to accept the services.
2. In the event the customer refuses to accept the assembly work within an adequate period of time determined by the Company although the former is obliged to do so, such behaviour shall be deemed to constitute acceptance.
3. Upon acceptance the customer shall have no further rights with regard to defects, unless the customer previously reserved their rights referring to this.

IV. Limitation

Claims on the part of the customer arising from defects with regard to assembly must be lodged within one year of acceptance. The period of limitation pursuant to § 634 a Abs. 1 Nr. 2 BGB shall remain unaffected.

V. Return of guarantee bonds

1. The Customer must return the guarantee bond immediately, i.e. after expiry of the guarantee period at the latest and without undue delay.
2. It is understood that the sending back of the original guarantee bond is obligatory by the Customer.
3. If the Customer fails to hand over the guarantee bond to the Company in due time and if the Customer is responsible for this circumstance, default in accordance with § 286 BGB (German Civil Code) shall occur upon the Company's request to hand over the guarantee bond.
4. In the event of default, the Company reserves the right to demand from the Customer default damages of 1.5% p.a. of the agreed total amount for the guarantee charges incurred by the Company. t.
5. Any other claims for damages shall remain unaffected by this provision.
6. If a comparatively higher damage occurs, the Company reserves the right to adjust the amount of compensation.

VI. Construction Work

Insofar as the Company performs construction services in accordance with the definition of § 1 VOB/A (German Construction Contract Procedures Part A), the provisions of VOB Parts B and C in the version current at the time the contract is signed shall apply accordingly.

Bremen, September 2020