

General Terms and Conditions for Supplies
(01/2007)

(1) Applicability

1. These Terms and Conditions for Supplies shall apply to all business transactions
 1. with persons acting, upon conclusion of the contract, in the performance of their commercial or independent, professional activity (businesspersons in the sense of section 14 subsection 1 BGB German Civil Code), and
 2. with legal persons of the public law or special funds of the public law.
2. These Terms and Conditions for Supplies are designed for contracts not falling within the special provisions of the purchase of consumer goods as governed by sections 474 and following BGB (German Civil Code).

The customer is obligated to inform us, if the possibility cannot be ruled out that the products supplied by us, also if embedded into other products, are delivered to consumers within the meaning of section 13 BGB (German Civil Code).

We shall be entitled to withdraw from the contract then. In such cases, our General Terms and Conditions for Supplies of Products which reach the Final Customers shall apply.

(2) Execution of contract

1. The following Terms and Conditions for Supplies exclusively shall apply to all agreements and offers – also in future – unless deviating individual agreements were made. No other conditions shall be included in the contract even if we have not expressly contradicted in writing. Our employees are not authorised to deviate from these terms and conditions.
2. Contracts shall only be concluded by our written or electronically transmitted order confirmation. Until then, our offers shall be subject to confirmation. We shall be entitled to issue the order confirmation until the expiry of 30 calendar days after having received the customer's purchase order. The order confirmation exclusively shall be decisive for the scope of the supplies or services.
3. Should the customer oppose the application of our Terms and Conditions for Supplies, we shall be entitled to rescind the contract.

(3) Prices

1. If not otherwise agreed, the prices are stated with no deductions, ex our works. The value added tax valid on the date of the dispatch will be added to our prices.
2. We shall be bound to the prices agreed for a purchase order for a period of four months from the execution of the contract. Should longer periods of delivery be agreed, we shall – in cases of an increase of the costs of material or labour – be entitled to add a material cost surcharge to the price based on our original calculation in order to compensate such increase of costs.
3. Costs of packing and packaging and freight will be charged in addition.

We shall retain the ownership in returnable pallets, and they have to be sent back in faultless condition on the next delivery. If they are not sent back within one month from the delivery, we shall charge our cost price.

(4) Supplies

1. Terms of delivery and delivery dates will be approximately and subject to confirmation. They will only be binding if we confirm this in writing.

The periods of delivery shall be complied with if we inform within the period agreed that the goods concerned are ready for dispatch.

Reasonable partial deliveries and usual or reasonable deviations from the quantities ordered shall be allowed.

2. The period of delivery shall be extended by the period during which we do not receive our own supplies correctly or in time.
Any period of delivery agreed shall commence only when the customer has submitted all documents, required permits, releases, and drawings to be provided by him.
Furthermore, the periods of delivery shall be extended reasonably if the customer does not comply with terms and conditions of payment or other contractual provisions.
The above shall not apply if we are responsible for the delay.
3. The period of delivery shall be extended by the occurrence of events that cannot be avoided by us, (force majeure) especially such as plant interruptions, acts of government, shortage of raw materials, strike, etc. for the period of the interference. If the supply becomes impossible for the same reasons, we shall be released from our obligation to supply. In such a case, we will immediately inform the partner to the contract about the impossibility and pay back any remuneration already received.
4. Even in the event of a delivery time determined by the calendar (section 286 subsection 2 no. 1, 2 BGB [German Civil Code]) we will only be in delay if an additional period for compliance of two weeks is fixed to us, unless we seriously and finally refused to perform before.
In the event of us being in culpable delay, the customer for each completed week of the delay shall be entitled to claim a contractual penalty at 0,5 % of the value of such part of the entire supply that cannot be used due to the delay, but in total a maximum of 5 % of such value.
Claiming a further loss shall remain unaffected, but we shall only be liable for losses caused by delay or non-compliance at maximum the double of the order value, unless the persons employed by us in performing our obligations or we acted wilfully or grossly negligent. Any contractual penalty to be paid shall be set off against the claim for damages of the customer.
5. The customer shall only be entitled to rescind the contract for delays in delivery if we can be blamed for such delay and if a reasonable additional period fixed to us has lapsed fruitlessly.
6. In case of orders for goods to be delivered on demand, we shall be entitled to fix an additional period of two weeks for taking delivery of the goods upon the expiry of six months from the order confirmation and then charge the goods not delivered plus reasonable storage fees at 0,5 % of the price for the delayed delivery for every commenced week of delay until the acceptance, however a maximum of totally 5 % of the delayed delivery. The proof of higher or lower storage fees shall remain reserved to the parties to the contract.
The same shall apply if the dispatch or the delivery of the goods on request of customer is delayed by more than one month from the notification of the readiness for dispatch.
7. To the extent to which we confirm any dates of delivery for supplies to abroad, we shall only be bound by this under the precondition that any factual and technical details can be clarified and any export and import arrangements can be made in time.

(5) Packing and packaging, and transportation risk

1. All deliveries shall be made ex works.
The risk of an accidental perishing and worsening of the condition of the goods shall pass to the customer on handing over the goods to the forwarding agent, at the latest when leaving the works. If the dispatch is delayed for reasons we are not responsible for, the risk shall pass upon the notification of the readiness for dispatch.
Clauses such as "delivery free" or similar provide for the cost of transportation, but do not change anything related to the above provision of the transfer of risk.
2. If not otherwise agreed, the kind of dispatch shall remain in our discretion, without responsibility for the cheapest kind of dispatch.
3. A transportation insurance cover shall only be taken out on express request and expense of the customer.
4. Our prices are based on the prerequisite that the customer disposes of the transportation packages. If any transportation packages are returned to us, the customer shall bear the cost of the transportation back to us. In such case, the transportation packages must be clean, free from foreign substances, and sorted in accordance with the different packages. If not, we shall be entitled to claim the additional cost for the disposal from the customer.

(6) Retention of title

1. We shall retain the title to all goods and services supplied by us until all claims – also those incurring in future – against the customer resulting from the business relationship have been paid. At an account current, the retention of title shall apply to the relevant balance. Taking back any goods shall not be regarded as a cancellation of the contract. If the customer is in delay with the customer's payments, we shall be entitled to take back the goods without cancelling the contract before. The goods will be credited with the real proceed upon having deducted the costs for selling and return.
The customer shall be obligated to take out an insurance cover against fire, water, and burglary for our property. The claims against the insurance company are hereby assigned to us. If on request the customer does not prove that customer has taken out an appropriate insurance cover, we shall be entitled to insure the goods against burglary, breaking, fire, water, and other losses with the cost to be borne by the customer.
2. The customer shall notify us promptly about any attachments, other dispositions, or any third-party interventions.
3. The customer shall be entitled to process the goods in the regular course of business or resell the goods by agreeing on an extended or expanded retention of title. The customer shall not be entitled to other dispositions.
The right of the customer to process and sell the goods shall lapse if the customer does not comply with the customer's payment obligations towards us, grossly infringes the contracts concluded with him in any other way, or suffers from a deterioration of his assets. Any stop of payments, overindebtedness, initiation of insolvency proceedings, and any other serious change of the financial conditions of the customer that could endanger our securities shall be regarded a deterioration of his assets.
4. Any goods that are subject to the retention of title will be processed on behalf of us. At a joint processing for several suppliers, we shall be entitled to the co-ownership in accordance to sections 947 et seq. BGB (German Civil Code).
If the customer connects or merges our goods with a good of his own in a way that the good of the customer is regarded as the main good, the customer already now transfers to us a share of the ownership in the main good in the ratio that the value of our good has compared to the value of the main good. Our co-ownership shall remain in the possession of the customer who is keeping the good for us.
5. The customer already now assigns to us a first-priority partial amount of the claims and ancillary rights arising from the resale, the size of the part being in accordance with our participation in the co-ownership. The customer shall not be entitled to agree on a non-assignability of said claims and ancillary rights.
If a debtor of the customer makes a partial payment to the customer, the claims assigned to us shall be deemed repaid at last.
In the regular course of business, the customer shall be entitled to collect the assigned claims. This authorisation shall lapse in the cases described in section (7) 3. above. The customer shall then be obligated to cooperate in collecting the claim.
6. On request of the customer, we undertake to release the securities to which we are entitled under the above mentioned provisions on our discretion if their realisable value exceeds the total claim to be secured by more than 20 %.
7. If at supplies to abroad the law of a different country does not allow the retention of title, but allows us as the seller to retain other rights in the subject matter of the supply, we shall be entitled to exercise all and any right of this kind. The customer shall be obligated to cooperate in all and any such actions.

(7) Payment

1. Unless otherwise agreed in writing, the payments shall be made within 30 days referring to invoice date with no deduction. If the customer proves that the invoice has been received later than within five workdays after the invoice date, then the payment deadline is extended by one day for each day the receipt of the invoice has been delayed.
The date of credit in our bank account without limiting condition shall be decisive for whether or not the payment has been made in time.
2. When exceeding the due-date, the customer without a warning will have to pay default interest at 8 percent above the then applicable Basic Interest Rate as defined in section 247 subsection 1 BGB (German Civil Code) if the customer does not prove that the customer is not responsible for the delay of the payment.
Any claim for additional damages shall remain reserved.
3. Payments will be credited at first to the costs, then to the interest, and then to the oldest debt.

4. If the customer is in default with one payment, all other claims shall fall due immediately if the customer does not prove that the customer is not responsible for the default.
5. Cheques and upon prior written agreement also bills of exchange will only be accepted pending full discharge of the debt and with the cost and expenses to be borne by the customer.
6. The customer shall only be entitled to set off own claims against our claim if the customer's own claims originated in his own person rather than being assigned to him and are undisputed or res judicata.
7. The customer shall only be entitled to a right of retention regarding claims resulting from the same contractual relationship that are undisputed or res judicata. Should only a part of a delivery be defect, payment can only be retained to an amount that corresponds to the value of the defective part.
8. If the customer is in delay with any payment of any kind or if a worsening of the customer's financial conditions occurs that gives rise to doubts about the customer's capability to pay, we shall be entitled to refuse any further performances and demand a prepayment or a security. Such a worsening of the financial conditions will be assumed among other things if bills of exchange or cheques are protested or if the limit fixed by a credit insurance is surpassed or would be surpassed by an intended supply. Additional legal rights (especially rescission of the contract) shall remain unaffected.

(8) Warranty

1. The customer in any case shall be obligated to examine the goods supplied by us immediately even if they are packaged.
Any obvious defects shall be complained of in writing within one week at the latest, calculated from the date of receipt.
Any hidden defects shall be complained of by the customer in writing within one week after having discovered them at the latest.
The partner to the contract shall be obligated to describe the defect complained of in detail and in writing. If such a complaint is not made or made only with a delay, the partner to the contract shall lose his claims related to possibly existing defects in goods. Any handling of the complaint by us, notably the examination of the good upon the partner to the contract having returned it, does in no way constitute a waiver of the compliance with the duty of complaint by the partner to the contract.
If it is agreed to conduct an acceptance procedure, it shall be made in our works by the customer or a representative of the customer or by a third party. Any obvious defects shall be claimed promptly there.
2. We warrant that the goods supplied by us are free from defects.
The products supplied by us are free from defects if they comply with the relevant contractual description of the products and their purpose of use in the contract that we concluded with our customer. The customer shall be obligated to accept any insignificant changes to the goods regarding construction, form, and design and the data stated in the specification and insignificant changes of our performance if they are reasonable or usual tolerances in quantity, quality, or execution.
We shall only provide for assembly instructions if agreed in writing.
3. Any information we publish in written or drawn form, e.g. in catalogues, specifications, figures, and drawings, as well as any data relating to measurements, weights, and performance, describe only the properties of our products and shall not be construed as a representation or warranty of quality or other warranties, representation or guarantee whatsoever.
Our employees, commercial representatives, or other distributors shall not be entitled to give any warranties, representations, guarantees or make other promises.
The presentation of samples or specimen alone shall not be deemed a warranty, representation or guarantee.
Changes of technical data and constructions serving the technological progress shall remain reserved.
4. Furthermore, any claims resulting from defects of a good shall be excluded if the defect was caused by natural wear and tear of the good, as a result of faulty or negligent treatment, deficient or irregular maintenance, improper use, defective assembly, following overstrain or use of unsuitable equipment or materials after the transfer of the risk, or due to impairments caused by special exterior influences after the transfer of risk that were not provided for in the contract. Any claims resulting from defects of a good shall also be excluded if the customer himself or through third parties performs maintenance work without them being imperatively required.

5. Deviation from the quantities ordered cannot always be prevented for technical reasons. When manufacturing products that are bound to drawings (technical springs), we have to reserve the right to supply more or less in the usual scope, i.e. 10 %.
All supplies with insignificant defects also have to be accepted by the customer.
6. If in individual cases we supply used products on contractual agreement, any claims resulting from a defect of a good shall be excluded if not otherwise agreed for the individual case.
This exclusion of warranty shall not apply to cases of intent or gross negligence or cases for which the liability is compulsory by law.
7. If the partner to the contract names a public statement notably in an advertisement as reason for a defect complained about by him, the partner to the contract has to prove that such public statement was the reason for his decision to buy this good.
8. In case of a defect, we shall be – at our discretion – entitled to cure the defect or deliver a good that is free from defects (subsequent fulfilment, section 439 BGB [German Civil Code]). In case of a subsequent fulfilment, we shall be obligated to bear any expenses in this regard, notably transportation, travel, labour, and materials costs as far as these are not increased by taking the good to another place than the place of performance.
Any parts complained about by our customer shall only be returned on our request to do so and, if required, in good packing and by enclosing a packing list with purchase order number.
9. We shall be entitled to refuse a subsequent fulfilment if it would be possible at unreasonably high cost only. This is especially the case if
 - the expenditure connected with the removal of the defect is expected to exceed 100 % of the market value of the good;
 - in case of a subsequent delivery the costs of our getting a replacement for the good exceed 150 % of the market value of the good.The other legal rights of the customer (price reduction, rescission of the contract, damages, compensation for futile expenses) shall remain unaffected.
10. If the law does not otherwise provide for imperatively, the customer shall be obligated at first to grant us a reasonable additional period in writing before being entitled to claim other warranty rights.
As a rule, we shall be granted a period of at least four weeks as of proof of the defect for the subsequent fulfilment if components or appliances are supplied by us are concerned, and a period of twenty workdays for the supply of spare parts. The terms are met, if we have sent within the terms. This shall not apply if in an individual case a shorter delivery period is agreed in writing or a differing period is imperative, e.g. in urgent cases where relatively high losses or dangers for the safety at operations are threatening.
If we do not subsequently fulfil within such period, the customer shall be entitled to claim his legal rights, notably to rescind the contract, demand a price reduction or - under the prerequisites of item (11) below – claim damages.
No fixing of an additional period is required if we finally and seriously refused the subsequent fulfilment or if no subsequent fulfilment is possible.
11. The rescission of the contract shall be excluded if the good is only insignificantly defective. Insignificant defects are among others only minor deviations from the contractually agreed properties of the goods and only minor impairments of the contractually agreed usability of the goods.
12. The partner to the contract shall only be entitled to claim damages in lieu of performance if delivery of the deficient good constitutes a significant breach of the obligation under the contract.
13. Damages for consequential losses incurring independently from the subsequent fulfilment (e.g. loss of production, loss of profit, claims based on delayed delivery to the customer's customers, etc., section 280 BGB [German Civil Code]) can only be claimed if a reasonable period for the subsequent fulfilment has lapsed fruitlessly. We are then liable for damages under the additional prerequisites of item (11) below.
14. The warranty period shall be 12 months from the date of delivery or the agreed acceptance of the good. The shortening of the warranty period shall not apply to intent or malice. The legal limitation period of five years shall apply to defects at buildings or goods that in accordance with their normal use are used for a building and that cause the building to be defective. (section 438 subsection 1 no. 2 BGB [German Civil Code]). In regard to an executed subsequent fulfilment or spare parts supplied as subsequent fulfilment, the warranty period shall be limited to the date of the expiry of the warranty period for the original supply.

15. If the period granted for the subsequent fulfilment expires fruitlessly, we shall be entitled to request from the customer that the customer informs us about his further warranty claims against us within a period of one month.
If the customer does not give the information within such period, any warranty claims shall be excluded. This shall only apply if we have expressly instructed on this legal consequence in our request including granting of the period.
16. In the event that the customer by way of a recourse is entitled to rescind the contract, reduce the purchase price or to get his expenditure compensated, we shall be entitled to assign warranty claims against our own suppliers based on the same defect to the customer on account of performance. We shall also be entitled to offer a lump-sum compensation to the customer; if the customer does not express disagreement with the offered lump-sum compensation within 14 calendar days, all claims of the customer based on the defect complained of shall be deemed fulfilled upon our payment of the lump-sum compensation provided that we have pointed out this legal consequence in our compensation offer
17. The partner to the contract shall only be entitled to make a recourse against us based on defective products in so far as the customer with his own customers has not agreed on provisions exceeding the domestic legal provisions, especially liability for breach of warranty. The above rules shall apply analogously to the scope of our liability for breach of warranty towards the partner to the contract in such cases.

(9) Defects of title

1. We shall be liable to the legal extent for the products supplied being free from defects of legal title.
If not otherwise agreed, we shall be liable for the products supplied by us not infringing any industrial property rights or copyrights of third parties only for the country in which we are domiciled (domestically).
We shall not be liable if an infringement of such protective rights is based on instructions that the customer gave or if modifications to the product without our authority or a use of the product by the customer deviating from the contractually agreed use was the origin of such an infringement.
2. The partner to the contract shall notify us promptly if third parties claim an infringement of protective rights.
If such prompt information is omitted, any and all warranty claims shall be excluded.
3. Item (8) 14. shall apply analogously regarding the warranty period.
4. If during the warranty period any justified third-party claims are raised, we, on our discretion, shall be entitled to procure the right of use for the relevant supplied good on our expense or modify the supplied good under observance of the contractual purpose in such a way that no protective rights are infringed, or supply comparable goods that do not infringe those protective rights.
5. Any warranty claim of the partner to the contract shall be excluded if the partner to the contract himself negotiates with the third party or makes any agreements without us approving.

(10) Protective rights

1. The customer shall be liable for all documents, objects, and the like delivered to us for the purpose of the supply or service not infringing any third-party protective rights. The customer shall hold us harmless from any third-party claims and reimburse us for any loss that may incur to us thereby. If any third party by invoking a protective right of such third party prohibits us to perform, manufacture, produce, deliver, or render the supply or service, we – without being required to review the merits of the case – shall be entitled to stop the work and demand that our expenditure be reimbursed.
Any documents, objects, and the like submitted to us that do not result in a purchase order will be returned on request against reimbursement of the expenses. We shall otherwise be entitled to destroy them three months after submitting our purchase offer.
2. We shall retain the legal title and all intellectual and industrial property rights in any samples, models, drawings, cost estimates, calculations, and similar information of physical or unphysical kind also in the electronic form. Such information must not be made accessible to third parties. If the partner to the contract in connection with the tendering or negotiating of a contract receives such information, he shall be obligated to return it on his expense in the event that no contract will be concluded.
The partner to the contract shall be entitled to disclose any information expressly marked as confidential by us upon our express approval only.

3. To the extent to which software is installed in our products, the customer shall have the non-exclusive right of use in the unmodified form in the products supplied. Possible individual agreements shall have priority.

(11) Damages

1. We, irrespective of which cause in law, shall be liable for damages only
 - if we, our legal representatives, or persons employed by us in performing our obligations act wilfully or grossly negligent;
 - in cases we have given a guarantee for the fulfilment of such guarantee in the agreed scope. Guarantees shall be in writing and must be expressly described as such;
 - in cases of death, bodily injury and health impairments;
 - in cases of other compulsory liability (e.g. product liability law, environmental liability law, and the like).
2. We shall be liable for damages in cases of ordinary negligence – except for the cases of item (11) 1. above – only for a breach of such duties which are essential for the contract, irrespective of which cause in law.

In case of a breach of duties essential for the contract acting with ordinary negligence, the amount of our liability for damages is limited to the compensation of the typical, foreseeable loss. The customer before signing the contract shall be obligated to instruct us on any possible special risks, untypical losses, and unusual amounts of losses.

The liability for any consequential or incidental losses beyond this, lack of economic success, indirect damages and damages based on third-party claims shall be excluded.
3. If the subject matter of a sales contract is an unascertained good, our liability shall also be determined based on the above provisions exclusively. Any liability for damages that does not depend on negligence shall be excluded.
4. The above provisions related to liability shall also apply to legal claims of the customer for a compensation of futile expenses, as well as for the personal liability of our employees, sales representatives, and persons employed by us in performing our obligations.

(12) Other rights and duties

In the event of a culpable breach of our obligation to give respect to the rights and interests of the customer in the sense of the section 241 subsection 2 BGB (German Civil Code) that are not directly related to the supply of the goods, our customer shall only be entitled to exercise his right to claim damages and rescind the contract if he warned us before in writing and fixed a reasonable period to remedy the breach.

No warning will be required if we or our sales representatives or persons employed by us in performing our obligations act wilfully or grossly negligent, or in cases of death, bodily injury and health impairments.

(13) Miscellaneous

1. Place of performance and place of jurisdiction shall be Lemgo, Germany.
2. Any – contractual and non-contractual – disputes arising out of or in connection with contracts to which these General Terms and Conditions for Supplies apply will be decided in accordance with the Rules of Arbitration of the German “Institution für Schiedsgerichtsbarkeit e.V. (DIS)” under exclusion of any state jurisdiction. The arbitration court consists of three arbitrators, and of one arbitrator for disputes with a value of less than EUR 5.000,00 €. Place of arbitration shall be Frankfurt/Main, Germany, language of arbitration shall be German.

We shall, however, also be entitled to initiate any action before state courts at Lemgo or any other place of jurisdiction given by law.
3. German law shall apply exclusively for all purchase orders placed with us, except for the UN-Sale Convention (CISG).
4. Should – irrespective of which cause – any individual provisions of our Terms and Conditions for Supplies be or become invalid, the validity and binding force of the remaining provisions will not be affected. The customer agrees that the invalid provision will be replaced by a valid provision coming as close as possible to the economic purpose of the invalid provision.
5. These Terms and Conditions shall only apply to supplies to businesspersons in the sense of section 14 subsection 1 BGB (German Civil Code) and to legal persons of the public law or a special fund of the public law.