

**To be used when dealing with:**

1. a person who, when concluding the contract, is engaging in his commercial activity or in his activity as a self-employed professional person (businessman);
2. corporate entities under public law or a special fund under public law.

**I. General**

1. These conditions as well as any possible separate contractual agreements form the basis of all supplies and services. Differing conditions of purchase from the buyer (customer) do not become the subject matter of the contract and this includes when the order is accepted. In the absence of a special agreement, a contract is formed upon the written order confirmation from the seller.
2. The seller reserves the rights of ownership and copyrights in respect of samples, cost estimates, drawings and similar and information of a corporeal and incorporeal kind, including in electronic form; they must not be made available to third parties. The seller undertakes to only allow third parties access to information and documents marked by the buyer as confidential if he has the buyer's approval for this.

**II. Place of performance, supply and acceptance test**

1. The place of performance for all supplies ensuing from the supply contract is the seller's place of business.
2. The goods are delivered ex German factory. The forwarding charges are borne by the buyer. The buyer can decide on the carrier. The goods are to be dispatched uninsured. A delivery advice note can be agreed.
3. When delivering from an external warehouse, the freight will be calculated ex factory; instead of this, a lump-sum storage surcharge can be invoiced.
4. Packaging costs for special packaging are borne by the buyer.
5. Sorted and, in the event of combinations, sale-related partial deliveries are permissible if these can be reasonably expected of the buyer or if he is notified of these beforehand. Unsorted partial deliveries are only permissible with the buyer's approval.
6. The risk passes over to the buyer when the delivery item has left the factory, even if partial deliveries are made or the seller has taken over other payments/services such as for example the forwarding charges or delivery to the buyer's works and installation. If inspection and acceptance are to take place, this is the point at which the risk is passed over. These must be carried out immediately on the acceptance date, alternatively following notification by the seller that the goods are ready for

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inspection and acceptance. The buyer cannot refuse to accept the goods due to the existence of a minor defect.

7. If dispatch or acceptance are delayed or fail to take place due to circumstances that are not ascribable to the seller, the risk passes over to the buyer from the day notification is sent stating that the goods are ready for dispatch and acceptance.

**III. Delivery period, delivery delays**

1. The delivery period is stated in the agreements between the contracting parties. Adherence thereto by the seller is dependent upon all commercial and technical queries between the contracting parties being clarified and upon the buyer honouring all the obligations that are incumbent upon him. If this is not the case, then the delivery period will be reasonably extended unless the seller is responsible for the delay.
2. Adherence to the delivery date is subject to the proviso that self-supply is correct and punctual. The seller will inform the buyer as soon as possible if delays become evident.
3. The delivery period is adhered to if the delivery item has left the seller's factory by the time the delivery period expires or the buyer has been notified that the item is ready for dispatch. If inspection and acceptance are to take place, the acceptance date, except for justified refusal to accept the goods, prevails, alternatively notification that the goods are ready for inspection and acceptance.
4. If the dispatch or the inspection and acceptance of the delivery item is delayed for reasons for which the buyer is responsible, then he will be charged for the costs ensuing from the delay, starting one month after notification that the goods are ready for dispatch or inspection and acceptance.
5. If non-adherence to the delivery date is due to an Act of God, to industrial disputes or other events that are beyond the seller's control, the delivery period will be reasonably extended. The seller will inform the buyer as soon as possible when such circumstances begin and when they end.
6. The buyer can withdraw from the contract without notice if ultimately total performance under the contract becomes impossible for the seller prior to the passing of risk. The buyer can also withdraw from the contract if, in respect of an order, carrying out part of the delivery becomes impossible and he has a justified interest in refusing the partial delivery. If this is not the case, the buyer must pay the contract price that is apportionable to the partial delivery. The same applies in the event of the incapacity of the seller. In all other cases, Section VII.2. of these conditions applies.
7. If impossibility or incapacity occurs during the default in accepting, or if the buyer is solely or predominantly responsible for these circumstances, he remains obliged to counter-perform.
8. If, taking into account the statutory exceptions, the buyer following due date sets a reasonable time limit for performance and if the time limit is not adhered to, the buyer is entitled, within the scope of the statutory regulations, to withdraw from the contract.

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Further claims ensuing from a delivery delay are determined exclusively according to Section VII.2. of these conditions.

**IV. Price and payment**

1. In the absence of a special agreement, the prices apply ex factory including loading at the factory, however excluding unloading. Sales tax at the statutory rate that applies at the time is added to the prices.
2. In the absence of a special agreement, payment is to be made with no deductions to the seller's account.  
1/3 advance payment after receipt of the order confirmation,  
1/3 as soon as the buyer is informed that the main parts are ready for dispatch,  
the remaining amount is to be paid within one month following the passing of risk.
3. In the event of immediate delivery of the goods, the price list that is valid on the day of delivery prevails, in all other cases the price referred to in the order confirmation prevails. As regards the prices stated in the catalogues or the price lists attached to these, the seller reserves the right in principle to amend the prices. The prices apply on the date that the catalogues or price lists are printed.
4. The seller's invoices are deemed to be agreed unless they are objected to within one week following receipt. This does not apply if the reason for the objection, even if the invoices are checked immediately, cannot be identified by the buyer within the time limit of one week. In this case the objection must be lodged immediately once the reason for the objection is identifiable.
5. The invoices are payable on the date that is agreed or referred to in the invoice. If no special provision was laid down or if no special agreement was made, payment must be made within 30 days following invoicing without any deduction.
6. The buyer only has the right to withhold payment or to offset it against counterclaims if his counterclaims are undisputed or established as being legally valid.
7. If payments are made after due date, interest on arrears is charged at the rate of 8 % per annum above the base lending rate. In principle payments are only deemed to have been made if the seller is in possession of the amount. The seller expressly reserves the right to reject cheques or bills of exchange. Discount and bill of exchange charges are borne by the buyer and are due for payment immediately. The seller is not liable for punctual presentation. If payment is made by cheque, the date of receipt is the date on which the cheque amount is irrevocably credited to the seller's account. The seller is in principle entitled to charge payments up against older debts first of all and he will inform the buyer as to how the payments have been allocated. This also applies if the buyer's provisions are worded differently. If costs and interests have already accrued, the seller is entitled to charge the payment up against the costs first of all, then against interest and finally against the principal amount owing.

**V. Retention of title**

1. Until all amounts owed are paid in full for all the goods delivered as a result of the entire business relationship between the seller and the buyer, including accessory claims, compensation claims, encashment of cheques and honouring of bills of exchange, the goods remain the property of the seller. Retention of title continues to exist even if individual claims by the seller are recorded in a current account and the balance is struck and accepted.
2. If the buyer combines, mixes or processes the reserved goods with a new movable, then this takes place for the seller without the seller being obligated as a result. The buyer does not acquire ownership of the new item in accordance with §§ 947 and following of the German Civil Code as a result of combining, mixing or processing the reserved goods. If the reserved goods are combined, mixed or processed with items that do not belong to the seller, the seller acquires co-ownership of the new item in the proportion of the invoiced value of his reserved goods to the total value.
3. If a central settlement office assuming the del credere is involved in the business transactions between the seller and the buyer, the seller transfers ownership to the central settlement office when the goods are dispatched subject to the condition precedent that the purchase price is paid by the central settlement office. The buyer shall only be released from obligation after payment has been made by the central settlement office.
4. The buyer is only entitled to resell or further process the goods taking into account the following conditions.
5. The buyer may only sell or process the reserved goods when carrying out his business activities in accordance with the regulations and only if his financial circumstances do not deteriorate markedly.
6. The buyer hereby assigns the amount owed from the resale of the reserved goods, together with any accessory rights - including any possible balance claims - to the seller.

If the goods were combined, mixed or processed and if the seller has acquired co-ownership to the extent of his invoiced value, he is entitled to the purchase-money claim that is proportionate to the value of his rights to the goods.

If the buyer has sold the amount owed by way of non-recourse factoring, the buyer assigns to the seller the amount owed by the factoring company in its place and passes on his sales proceeds to the seller in the proportion of the value of the seller's rights to the goods. The buyer is obliged to inform the factoring company of the assignment if he is more than 10 days overdue with the settlement of an invoice or if his financial circumstances deteriorate substantially. The seller accepts this assignment.

7. The buyer is authorised to collect the assigned receivables provided that he honours his payment obligations. The collection authorisation expires if the buyer is in default or if the buyer's financial circumstances deteriorate substantially. In this case the seller is hereby authorised by the buyer to inform the customers of the assignment

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and to collect the receivables himself. In order that the seller can claim the assigned receivables, the buyer must provide the information required and allow this information to be checked. In particular, if requested by the seller, he must hand over to the seller a detailed list of the receivables to which he is entitled, with the name and address of the customer, the amount of the individual receivables, invoice date etc.

8. If the value of the securities in favour of the seller exceeds all the amounts owed to the seller by more than 10 %, then, if requested by the buyer, the seller is obliged to release securities according to his choice.
9. Pledging or collateral assignment of the reserved goods or the assigned receivables are not allowed. The seller is to be informed of seizures immediately whilst naming the distrainer.
10. If when exercising his right of retention the seller takes back the delivery item, withdrawal from contract only takes place if the seller declares this expressly. The seller can pay off the amounts owed to him by privately selling the reserved goods taken back.
11. The buyer keeps the reserved goods safe for the seller free of charge. He must insure them against the usual risks, such as for example, fire, theft and water and to the usual extent. The buyer hereby assigns his claims for damages of the kind described above, which he is entitled to make against insurance companies or other parties liable, to the seller, the amount being equal to the invoiced value of the goods. The seller accepts the assignment.

**VI. Notice of defect, claims arising from defects**

In the event that the delivered goods contain material defects and defects in title, to the exclusion of further claims and subject to Section VII, the seller warrants as follows:

Material defects

1. All those parts that turn out to be defective due to a circumstance that existed before the risk was passed on, are to be remedied or replaced free of defects and free of charge, according to the seller's choice. The seller is to be informed immediately and in writing if such defects are detected. Replaced parts become the property of the seller.
2. In order that the seller can carry out the remedial work and replacement deliveries that he deems necessary, the buyer, following agreement with the seller, must allow the seller time and give him the opportunity to carry out such measures; otherwise the seller is released from the liability for the consequences ensuing therefrom. The buyer only has the right to remove the defect himself or to arrange for a third party to remove it and to demand a refund of the necessary costs from the seller in urgent cases, where operational safety is jeopardised or in order to avert excessive damage (and the seller must be informed of this immediately).
3. Within the scope of the statutory provisions, the buyer has a right to withdraw from the contract if the seller - taking into account the statutory exceptions - lets a reasonable set time limit for the remedial work or replacement delivery on account of a material defect expire with no such work or delivery taking place successfully. If

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the defect is only minor the buyer is only entitled to reduce the contract price. Otherwise the right to reduce the contract price remains excluded. Further claims are determined by Section VII.2. of these conditions.

4. No warranty is provided particularly in the following cases:

Unsuitable or improper use, incorrect assembly by the buyer or third parties, natural wear and tear, incorrect or careless handling, maintenance work that is not in accordance with the rules, unsuitable machines and equipment, defective building work, chemical, electrochemical or electrical influences unless the seller is responsible for these.

5. If the buyer or a third party carries out improper remedial work, the seller is not liable for the ensuing consequences.  
The same applies to changes made to the delivery item without the prior approval of the seller.

Defects in title

6. If use of the delivery item results in a breach of industrial property rights or copyrights in the home country, the seller will in principle, at his expense, grant the buyer the right to further use the delivery item or he will modify the delivery item in a way that is appropriate for the buyer so that the breach of the protective right no longer exists.

If this is not possible within a reasonable period of time or according to terms that are financially and commercially reasonable, both the buyer and the seller are entitled to withdraw from the contract. In addition, the seller will indemnify the buyer against undisputed claims made by the registered proprietor concerned or claims made by this person that are established as being legally valid

7. The seller's obligations referred to in Section VI. 6. are, subject to Section VII.2., final and definitive in the event of a breach of industrial property rights or copyrights.

They only exist if

- the buyer informs the seller immediately of asserted breaches of industrial property rights or copyrights,
- the buyer supports the seller to a reasonable extent when defending the asserted claims and/or allows the seller to carry out modification measures in accordance with Section VI. 6.,
- the seller retains the right to take any defensive measures including arranging out-of-court settlements,
- the defect in title is not due to an instruction from the buyer and
- the infringement of a right is not due to the fact that the buyer has changed the delivery item without proper authority or has used it in a way that is not in accordance with the contract.

## **VII. Liability**

1. If the delivery item, through the fault of the seller as a consequence of failing to follow or following incorrectly proposals and advice provided by the buyer before or after the contract is concluded or due to the breach of other contractual accessory obligations, particularly instructions concerning the servicing and maintenance of the delivery item, cannot be used by the buyer in accordance with the contract, the regulations contained in Sections VI. and VII.2. apply accordingly to the exclusion of further claims by the buyer.
2. The seller is only liable for damages that have not occurred to the delivery item itself, for whatever legal reasons
  - a) in the event of intent,
  - b) in the event of gross negligence by the owner/the executive bodies or executive personnel,
  - c) in the event of culpable injury to life, body or health,
  - d) in the event of defects which he has fraudulently concealed or whose absence he has guaranteed,
  - e) in the event of defects in the delivery item he is liable in accordance with the product liability law for personal or material damages to privately used objects.

In the event of culpable breach of fundamental contractual duties, the seller is also liable in the event of gross negligence by non-executive personnel and in the event of slight negligence, in the latter case liability is limited to contract-typical reasonably foreseeable damage. Further claims are ruled out.

## **VIII. Statutes of limitation**

All claims by the buyer, for whatever legal reasons, become statute-barred in 12 months. The statutory periods apply to claims for damages according to Section VII. 2. a - e. They also apply to defects in a construction or to delivery items which were used for a construction according to their usual manner of use and which caused its defectiveness.

## **IX. Use of software**

If software is included in the scope of supplies, the buyer is granted a non-exclusive right to use the delivered software including its documentation. The buyer is allowed to use the software in the delivery item for which it is intended. The software cannot be used in more than one system.

The buyer may only duplicate, rework or decode the software or convert it from object code to source code to the extent that the law allows (§§ 69 a and following of the Copyright Act). The buyer undertakes not to remove the manufacturer's particulars,

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particularly copyright statements, or to change them without the prior express approval of the seller.

Any other rights to the software and the documentation, including copies, remain with the seller and/or the software suppliers. The issuing of sublicences is not allowed.

**X. Applicable law, place of jurisdiction**

1. The law of the Federal Republic of Germany which is authoritative for the legal relationships between German parties applies exclusively to all the legal relationships between the seller and the buyer. The UN Convention on Contracts for the International Sale of Goods dated 11.04.1980 is excluded.
2. The place of jurisdiction is the court that has jurisdiction over the seller's registered office. The seller is entitled however to institute legal proceedings at the buyer's headquarters.