

General Terms of Delivery for Products and Services of Stemmann -Technik GmbH

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I. General provisions

1. The supplier's terms of sale apply exclusively; the supplier shall not recognise conflicting conditions of the purchaser or those that differ from the supplier's terms of sale, unless the supplier has expressly approved their validity in writing. The supplier's terms of sale shall also apply if the latter carries out the delivery to the purchaser unconditionally with knowledge of the purchaser's conflicting conditions or those that differ from his terms of sale. All agreements reached between the supplier and the purchaser for the purposes of executing this contract must be set down in writing in this contract. The supplier's terms of sale shall also apply to future business transactions with the purchaser within the scope of the current business relationship.
2. The supplier shall unreservedly retain its exploitation right pertaining to property and copyright law for quotations, drawings and other documents (referred to below as documents). The documents may only be made accessible to third parties after prior approval from the supplier and must be returned to the latter immediately on demand, if the contract is not awarded to the supplier. Sentences 1 and 2 apply accordingly to the purchaser's documents; these may, however, be made accessible to third parties to whom the supplier has permissibly transferred deliveries.
3. In the case of standard software the purchaser has the non-exclusive right to use it with the agreed features on the agreed equipment in an unchanged form. The purchaser is allowed to produce two backup copies without express agreement.
4. Part deliveries are permissible insofar as they can reasonably be expected of the purchaser.

II. Offers, prices and terms of payment

1. If the order can be classified as an offer according to § 145 of the German Civil Code (BGB), the supplier may accept this within 4 weeks. The supplier's offers are without obligation, unless the order acknowledgement states otherwise.
2. The prices are ex work excluding packaging, plus the effective VAT and other costs, such as customs duty and insurance premiums, etc.
3. If the supplier has taken on installation or assembly, and nothing else has been agreed, the purchaser shall bear all necessary additional costs, in addition to the agreed remuneration, such as travel expenses and costs for transporting tools and personal luggage, and travel allowances.
4. Payments must be made to the paying agent of the seller free of charge. Unless the order acknowledgement states otherwise, the net remuneration (without discount) is due for payment within 30 days from the invoiced date. Should the purchaser default, the supplier is entitled to demand interest on arrears of 8% p.a. above the respective base lending rate according to § 247 of the German Civil Code (BGB). In the event that the supplier is able to prove higher damage caused by default, the supplier is entitled to claim this. The purchaser is, however, entitled to prove to the supplier that that latter has incurred no or considerably less damage as a consequence of the payment default. § 353 of the German Civil Code (HGB) is unaffected.
5. Insofar as the supplier agrees payment of the remuneration with the purchaser based on the cheque-bill of exchange procedure, the reservation of title shall also extend to when the purchaser pays the bill that has been accepted by the supplier, and shall not cease when the received

cheque is credited to the supplier's account.

6. The purchaser is only entitled to offset rights if its counterclaims are established as being legally valid, if they are undisputed or they are recognised by the supplier. The purchaser is also authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

III. Reservation of title

1. The products shall remain the supplier's property until all claims from the total business association, including accessory claims, compensation claims, and the cashing of checks and payment of bills, have been settled in full. The reservation of title also remains in place if individual receivables of the supplier are incorporated into a current invoice and the balance is struck and recognised.
2. Should the reserved product be connected, mixed or processed by the purchaser to produce a new movable object, this shall take place for the supplier without the latter being placed under any obligation as a result of this. The purchaser shall not acquire ownership of the new object as a result of it being connected, mixed or processed according to §947ff. of the German Civil Code (BGB). In the event that objects that do not belong to the supplier are connected, mixed or processed, the suppliers shall acquire a part ownership of the new object according to the ratio of the invoiced value of its reserved product to the total value.
3. Insofar as the services of a central settlement agency are used for conducting business between the supplier and the purchaser, and the agency assumes the *del credere*, the suppliers shall transfer the property by sending the product to the central settlement agency with the condition precedent that the purchase price is paid through the central regulator. The purchaser is only free when payment is made by the central settlement agency.
4. The purchaser is only entitled to resell or reprocess the object taking into account the following conditions:
 - a) The purchaser may only sell or process the reserved product in the proper course of business and if its financial circumstances do not deteriorate in a sustained way.
 - b) aa) The purchaser shall herewith transfer its claims, with all subsidiary rights from the resale of the reserved product –including any balance claims –to the supplier.
bb) If the product has been connected, mixed or processed and if the supplier obtains part ownership of this product to the extent of its invoiced value, it is entitled to the purchase-price claim proportionate to the value of its rights to the product.
cc) If the purchaser has sold the claim within the scope of re-factoring, the purchaser shall transfer the claim arising in its place against the factor to the supplier and shall pass on its sale proceeds to the supplier proportionate to the value of the supplier's rights to the product. The purchaser is obliged to disclose the transfer to the factor if it is more than ten calendar days overdue with payment of an invoice or if its financial circumstances considerably deteriorate.
dd) The suppliers shall accept the specified transfers.
 - c) The purchaser is authorised to collect the transferred claims, as long as it meets its payment obligations. The collection authorisation becomes invalid if the purchaser defaults on payment. In this case the supplier is herewith authorised by the purchaser to inform the purchaser's client about the transfer and to collect the claims itself. The purchaser must provide the necessary information to assert the transferred claims and must consent to an examination of this information. It must especially submit to the

supplier, on demand, an exact list of the claims it is due with the name and address of the clients, the size of the claim and the invoice date, etc.

5. Should the value of the existing collateral for the supplier exceed the latter's total claims by more than 20%, the supplier is obliged to release collateral of its choice to this extent at the supplier's request.
6. Pledging or the collateral assignment of the reserved product or the transferred claims is not allowed. The supplier must be informed immediately about seizures, confiscations or other disposal or interventions by third parties, giving exact details of the distrainer or third party.
7. Should the supplier take back the delivery item in exercising its reservation of title rights, this shall only constitute withdrawal from the contract if the supplier expressly declares this. The supplier may satisfy its claims from the reserved product it has taken back through a private sale.
8. The purchaser shall keep the reserved products safe for the supplier free of charge. It shall insure it against standard risks, such as, for example, fire, theft and water, on the normal scale at its own expense. The purchaser shall herewith transfer to the seller its claims for payouts from insurance companies to which it is entitled, arising from damage of the aforementioned type, or other claims against other parties liable for damage to the extent of the invoice value of the product. The supplier shall accept the transfer.
9. All claims and rights from the reservation of title in all special forms stipulated in these Terms and Conditions shall remain in place until any contingent liabilities (cheque/bill) the seller has entered into in the purchaser's interest have been indemnified in full. The purchaser is generally allowed in the case of Sentence 1 to carry out factoring for its outstanding debts. It must, however, inform the seller before entering into any contingent liabilities.

IV. Timelimitsfordelivery;default

1. Compliance with agreed timelimitsfordeliveries assumes the punctual receipt of all documents to be delivered by the purchaser, necessary licences and clearances, especially of plans, and compliance with the agreed terms of payment and other obligations by the purchaser. Should these obligations not be met on time, the timelimits shall be extended to an appropriate extent; this does not apply if the supplier is responsible for the delay.
2. Delivery dates stated in the order acknowledgement are only considered fixed dates if they are expressly described as such, for instance by the additional remark "fixed" or "at the latest".
3. Should non-compliance with the timelimits be attributable to force majeure, e.g. mobilisation, war, revolt or similar events, e.g. strike or lock-out, the timelimits shall be extended appropriately.
4. Should the supplier default, the purchaser may demand compensation of 0.5% for each completed week of default - if it can establish a prima facie case that it has suffered damages due to the default - but not more than 5% of the total price for the part of the deliveries that could not be usefully used in the business due to the default. ue
5. Both compensation claims by the purchaser due to delivery default and compensation claims instead of performance that extend beyond the limits stated in No. 3 are excluded in all cases of delayed delivery, even after the expiration of a timelimit for delivery set for the supplier. This does not apply if liability is mandatory in cases of intent, gross negligence or due to the violation of human life, the body or health; a change in the onus of proof to the detriment of the purchaser is not connected to this. The purchaser may only withdraw from the contract within the scope of

statutory provisions if the supplier is responsible for the delivery default.

6. The purchaser is obliged to declare within an appropriate period, at the supplier's request, whether it shall withdraw from the contract due to the delivery default and/or demand compensation instead of the service or insist on the delivery.
7. Should forwarding or delivery be delayed by more than a month, at the purchaser's request, after readiness for dispatch has been signalled, the purchaser may be charged warehouse charges of 0.5% of the price of the delivery items for each new commenced month; however, at a maximum rate of 5%. The contracting parties are at liberty to prove higher or lower warehouse costs.
8. The right to carry out correct and punctual self-delivery is reserved.

V. Transfer of risk

1. Risk is transferred to the purchaser, including in the case of a carriage-paid delivery, as follows:
 - a) In the case of deliveries without installation or assembly, when they have been brought for forwarding or picked up. Deliveries from the supplier shall be insured against standard transport risks at the request and expense of the purchaser.
 - b) In the case of deliveries with installation or assembly, on the date of acceptance into the purchaser's own company or, if agreed, after a perfect test-run on the company premises.
2. If forwarding, delivery, the start, implementation of installation or assembly, acceptance into the purchaser's own company or the test-run is delayed for reasons for which the purchaser is responsible or the purchaser defaults on acceptance for other reasons, the risk is transferred to the purchaser.

VI. Installation and assembly

The following provisions apply to installation and assembly, unless other agreements have been reached in writing:

1. The purchaser must take on the following at its expense and provide them on time:
 - a) all ground, construction and other extra jobs alien to the industry, including skilled and unskilled workers, building materials and tools necessary for this,
 - b) the necessary commodities and materials, such as scaffolding, lifting gear and other devices, fuels and lubricants, for assembly and start-up,
 - c) energy and water at the place of use, including connections, heating and lighting,
 - d) sufficient large, suitable, dry and lockable rooms at the assembly site for keeping machinery parts, apparatus, materials and tools, etc., appropriate work and social rooms for the assembly staff, including sanitary facilities that are appropriate for the circumstances; the purchaser must also take measures to protect the supplier's and the assembly staff's property on the building site commensurate with measures it would take to protect its own property,
 - e) Protective clothing and protective equipment that is necessary due to the special circumstances at the assembly site.

2. Before the commencement of assembly work the purchaser must make the necessary information about the position of concealed electricity, gas and water lines or similar equipment, and the necessary structural data, available of its own accord.
3. Before the commencement of installation or assembly, the necessary provision of materials and objects for starting work must be located at the installation or assembly site and all preliminary work prior to commencing assembly must be so well advanced that installation or assembly can be started as agreed and implemented without any interruptions. Delivery roads and the installation or assembly site must be level and cleared.
4. Should installation, assembly or start-up be delayed for reasons beyond the supplier's control, the purchaser must to a reasonable extent bear the costs for waiting time and also for necessary additional travel carried out by the supplier or the assembly staff.
5. The purchaser must immediately certify to the supplier on a weekly basis the duration of the assembly staff's working hours and the completion of the installation, assembly or start-up.
6. Should the supplier request acceptance of the delivery after completion, the purchaser shall carry this out within two weeks. Should this not take place, the acceptance shall be considered completed. The acceptance shall also be considered completed if the delivery has been used –if necessary after completion of an agreed test phase.

VII. Acceptance

Deliveries must be accepted by the purchaser, even if they have negligible defects.

VIII. Faults

The supplier is responsible for faults as follows:

1. All parts or services that show a fault within the statutory limitation period –without allowing for the plant operating time –must either be repaired, redelivered or refurbished by the supplier, depending on which option it chooses, if its cause already existed at the time when the risk was transferred.
2. The contracting parties are agreed –contrary to §434 of the German Civil Code (BGB) – that the target quality of the delivery item when risk was transferred is met, unless a different individual agreement has been reached, if it is of an average kind and quality with respect to the mass or general production of the delivery item at the supplier's premises. If the quality is less, a defect does not exist if use as stipulated in the contract is not affected. §434, Sect. 2, Sentence 2 is not used.
3. Claims for faults shall become statute-barred in six months from the due date of the fault claim, at the longest, however, in 12 months from delivery of the item. This time limit also applies to indirect damage due to defects, if no claims in tort have been asserted. This does not apply if the law according to §438, Sect. 1, No. 2 of the German Civil Code (BGB) (buildings and objects for buildings) stipulates longer time limits, nor in cases of violation of human life, the body or health, intentional or grossly negligent violation of obligation by the supplier or in the case of fraudulent concealment of a defect.
4. The purchaser must notify faults to the supplier immediately.

5. If defects are notified, payments by the purchaser may be withheld on a scale that is reasonably proportionate to the faults that have occurred. The purchaser may only withhold payments if a notice of defect is asserted and there is no doubt that it is justified. If the notice of defect is wrong, the supplier is entitled to demand compensation from the purchaser for the costs it has incurred.
6. Initially the supplier must always be allowed the opportunity to meet its obligations afterwards within a reasonable limited period.
7. Should the supplier fail to meet its obligations at a later stage, the purchaser may – regardless of any compensation claims according to Art. X I – withdraw from the contract or reduce payment.
8. Claims made for defects shall not be recognised if the quality of the product only varies negligibly from the agreed quality, in the case of natural wear and tear or if damage occurs after the risk has been transferred due to incorrect or negligent handling, excessive strain, unsuitable operational equipment, defective construction work, unsuitable building and/or as a result of special external influences that have not been allowed for in the contract, or in the case of non-reproducible software defects. If improper changes or repair work are carried out by the purchaser or third parties, no claims for defects shall be accepted for these or the resulting consequences.
9. Claims made by the purchaser due to expenses that become necessary for the purposes of rectifying faults, especially transport, travel, labour and material costs, are excluded, if the expenses increase because the delivery item has been moved to a different location than the purchaser's place of business, unless the transfer corresponds to its intended use.
10. The purchaser only has legal rights of recourse against the supplier if no agreements have been reached with by the purchaser its customer that extend beyond the legal claims for defects. Number 8 applies accordingly with regard to the extent of the purchaser's rights of recourse against the supplier.
11. Art. XI (Other compensation claims) also applies to compensation claims. More far-reaching claims by the purchaser against the supplier and its vicarious agents due to a fault or other claims than those dealt with in this Art. VIII are excluded.

IX. Industrial property rights and copyrights: defects of title

1. Unless otherwise agreed, the supplier is only obliged to furnish the delivery in the country of the delivery location free from industrial property rights and copyrights of third parties (referred to below as industrial property rights). Insofar as a third party lodges justified claims against the purchaser due to the infringement of industrial property rights through deliveries furnished by the supplier which are used as stipulated in the contract, the suppliers shall be liable toward the purchaser within the time limits specified in Art. VIII, No. 2 as follows:
 - c) The suppliers shall, at its own option and at its own expense, either secure usufruct for the deliveries in question, change them so that the industrial property right is not violated or substitute the deliveries. Should this not be possible for the supplier under reasonable conditions, the purchaser is legally entitled to withdraw from the contract or claim a reduction of the purchase price.
 - d) The supplier's obligation to pay compensation conforms with Art. XI.
 - e) The supplier's aforementioned obligations only apply if the purchaser informs the supplier about the claims asserted by third parties immediately, does not recognise an infringement and the supplier retains the right to take all defensive measures and enter into settlement negotiations. Should the purchaser discontinue use of the delivery for loss

minimisation or other important reasons, it is obliged to inform the third party that no recognition of a violation of industrial property rights is connected with the cancellation of use.

2. Claims from the purchaser are excluded if the purchaser is responsible for the infringement of industrial property rights.
3. Claims by the purchaser are also excluded if the infringement of industrial property rights is caused by special instructions introduced by the purchaser, by a use that was not foreseeable by the supplier, or by the delivery being changed by the purchaser or being used by the purchaser together with products not delivered by the supplier.
4. In the event of infringements of industrial property rights, the provisions of Art. VIII, No. 4, 5 and 9 also apply according to the purchaser's claims dealt with in No. 1 a).
5. If other deficiencies in title exist, the provisions of Art. VIII apply accordingly.
6. More far-reaching or other claims by the purchaser against the supplier and its vicarious agents due to a deficiency in title that are not dealt with in this Art. IX are excluded.

X. Impossibility; contract adjustment

1. If the delivery is impossible, the purchaser is not entitled to demand compensation, unless the supplier is responsible for the impossibility. However, the purchaser's compensation claim is restricted to 10% of the value of the part of the delivery that cannot be put into useful operation. This restriction does not apply if, in cases of intent, gross negligence or due to the violation of human life, the body or health, liability is conclusive; a change in the use of proof to the detriment of the purchaser is not connected to this. The purchaser's right to withdraw from the contract is not affected.
2. Should unforeseeable events, as defined by Art. IV, No. 2, considerably change the commercial meaning or the content of the delivery or have a substantial effect on the supplier's factory, the contract shall be adapted appropriately, taking into account good faith. Should this not be economically justifiable, the supplier is entitled to withdraw from the contract. Should he want to make use of this right to withdraw, he must inform the purchaser immediately after recognising the implications of the event, even if an extension of the delivery time was first agreed with the purchaser.

XI. Other compensation claims

1. The purchaser's compensation claims and claims for reimbursement of expenses (referred to below as compensation claims), for whatever legal reason, especially due to violation of obligations from the contractual obligation and from tortious acts, are excluded.
 2. This does not apply if liability is mandatory, e.g. according to the Product Liability Act, in cases of intent, gross negligence or due to the violation of human life, the body or health or due to the infringement of important contractual obligations. Should liability by the supplier be considered according to the aforementioned provision, and neither intent, gross negligence nor violation of human life, the body or health exist, the size of the claim is limited to the claim payments of the supplier's product liability obligation insurance. The suppliers shall be prepared to allow the purchaser to examine its insurance policy. The suppliers shall undertake to maintain the insurance
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until the guarantee period expires (Section VIII.2). A change in the onus of proof to the detriment of the purchaser is not connected to the aforementioned provisions.

3. Should the purchaser be entitled to compensation claims according to this Art. XI, these shall become statute-barred when the effective statutory period for quality claims expires according to Art. VIII, No. 2.

XII. Place of jurisdiction, applicable law, place of performance

1. The place of jurisdiction, including summary actions based on bills and cheques - insofar as the purchaser is a registered merchant, a legal person under public law or a public separate fund, is Münster. The same place of jurisdiction applies if the seller has no general place of jurisdiction in Germany, moves its place of residence or normal abode out of Germany after conclusion of the contract, or its place of residence or normal abode is not known on the date the suit is filed.
2. The substantive law of the Federal Republic of Germany shall exclusively prevail for all legal relationships with the purchaser, without referring them to another legal system. The United Nations Accord from 11.04.1980 (UN Purchasing Rights/CISG) regarding sale of goods is not used.
3. The place of performance is Schüttorf.

XIII. Legal validity of the contract

If individual provisions become legally ineffective, the other sections of the contract shall remain binding. This does not apply if adherence to the contract would represent an unreasonable hardship for one of the contracting parties.