

Terms and conditions of delivery and payment

1. Extent of supply

1. The following conditions apply to all contracts and deliveries (and services); insofar as no divergence is agreed in writing.
2. All quotations are open for acceptance and subject to change without notice, if nothing else is agreed.
3. The obligation for supply shall only arise after the contract has been accepted by means of written confirmation, which is definitive for the contractual duties of both parties. Telegraphic, telephonic or verbal supplements, revisions or ancillary agreements shall require to be confirmed in writing by the supplier.
4. The documents that are part of the quotation – such as illustrations, drawings and information about weight – only give the approximate values which are normal for the industrial sector; insofar as they are not expressly designated as binding. The supplier retains the ownership and copyright of such documents; they are not allowed to be made accessible to third parties. They must be returned immediately on demand or if the order is placed.
5. Type samples shall only be given on request and they shall be charged for separately.
6. The supplier shall not be liable for defects which arise from documents that have been submitted by the customer.
7. If the claim for remuneration to which the supplier is entitled arises after the contract has been made, then he can demand a pre-payment or adequate security and he can refuse to perform [his contractual duties] until his demand has been met, or he can choose to withdraw from the contract.

2. Price

1. Orders shall be charged in EURO at the prices that are agreed in the quotation and order. Deliveries for which fixed prices are not agreed expressly, shall be invoiced at the prices that are applicable on the day when the delivery takes place.
2. The prices shall apply – if nothing else is agreed – ex-works and without packaging. They shall respectively apply only for the defined quantity and only for the version [of the manufactured article] that is provided for in the quotation and order. If drawings, samples, adapters or templates are given that diverge from the quotation and enquiry and which require more processing [i.e., machining] than is assumed in the quotation and enquiry, then the right is reserved to increase the price.

3. Terms and conditions of payment

1. All invoices shall become payable 30 days after the date of invoice and without any deduction; a discount of 2% shall be granted for payment within 8 days.
2. Payment shall be made to the supplier's paying office [i.e., bank branch] free of charge. It is not allowed to be withheld because of counterclaims that are unrecognized by the supplier. Compensation shall only be allowable by special arrangement.
3. Farned-out work shall become due for payment immediately after completion.

4. Despatch

The despatch shall always be made at the customer's risk; even when a prepaid carriage is agreed. The despatch shall be effected according to the best estimate in the absence of specific instructions; without any obligation for the cheapest kind of despatch however.

5. Packaging

Packaging shall be charged at cost price; it shall not be taken back [i.e., collected after the delivery has been made].

6. Time of delivery [i.e., period stated for delivery]

1. All information about times of delivery are only approximate and unbinding, as far as no fixed times of delivery are agreed. Claims for compensatory damages if the unbinding times of delivery are exceeded, are excluded.
2. The time of delivery shall begin on the day that the order is received in writing. Compliance with it is pre-conditional on timely receipt of all the documents and requisite approvals that have to be supplied and on compliance with the agreed obligations. It shall be extended reasonably otherwise. The same provision applies to a hindrance that is not the supplier's responsibility, which he notifies as soon as possible. The time of delivery shall apply as having been complied with, if the consignment has left the supplier's factory.
3. Delays of any kind that are caused by force majeure – such as a power cut, mechanical defects, illnesses, strokes, etc., – shall entitle the supplier to postpone the time of delivery accordingly.

7. Time stated for acceptance

The supplier shall allow a period of 6 months – in the absence of any other agreement – regarding call-forward orders, which shall run from the date of order. He shall be entitled to charge for the goods or withdraw from the contract according to his choice, after this period has expired.

8. Miscellaneous influence of force majeure

Events of force majeure – even declarations of war and mobilization – shall entitle the supplier to withdraw from the contract completely or partly. The same provision shall apply to operational interruptions that have arisen because of insufficient supplies of raw materials, mechanical breakdown, blockage of transport by lorry and railway, etc. These events shall also exempt the supplier from any damages.

9. Delivery quantity

The compliance with exact numbers of units is not possible during fabrication: the right is reserved to deliver quantities that are greater or lesser by up to 10%. Divergent agreements require to be made in writing.

10. Defects liability

Customer's complaints [i.e., notices of defects] can only be recognized – irrespective of the regulation in article 377 of the German Civil Code (BGB) – if they are made within 8 days after receipt of the goods. Complaints about the quantity [shall only be recognized] if they are made immediately after receipt of the consignment. The supplier shall choose to either replace defectively supplied goods if they are provably the supplier's responsibility, or to issue a credit note for them. More far-reaching claims shall be refused automatically. If the goods are not despatched to the customer but to a third party instead, then they must be inspected and accepted at the manufacturer's premises; otherwise they shall apply as being in accordance with the order when they are despatched. Defective goods must be returned to the manufacturer, if nothing else is agreed. Delivered materials shall be processed [i.e., machined] with great care. Despite that, if workpieces that are made from this material become unusable as a result of defective workmanship, then we shall carry out the identical processing without charge if new material is delivered to us [for this purpose]. A claim to further compensatory damages shall not exist: especially not for replacement of the material that has been lost because of defective workmanship.

11. Partial deliveries

1. Partial deliveries are allowed.
2. A partial delivery must be compulsorily inspected immediately and any complaint has to be made immediately (telephonically or telegraphically), because refinishing shall be carried out in general; otherwise the partial delivery shall apply as a failed consignment and it shall be definitive for a further execution of the order. The customer cannot derive any rights from the defective partial delivery, regarding the remaining partial quantities.

12. Reservation of ownership

The delivered goods shall remain the supplier's property until complete payment of the purchase price as well as other debt claims that arise from earlier deliveries. If a current account exists, then they [i.e., the delivered goods] shall remain the supplier's property until his entire debt claim has been paid off. Bills of exchange and cheques that are accepted, shall only apply as payment after they have been cleared. Payment shall be credited against the oldest accrued debts, in the absence of a diverging agreement.

- a) The buyer as a reseller shall only be allowed to resell the purchased goods in normal business transactions and before the occurrence of his delayed performance: i.e., typically no longer after the occurrence of a financial collapse, especially after payments have been discontinued.
- b) The buyer shall be allowed to combine the reserved goods to the same extent if they have been handed over to him as well – even for processing, reprocessing or assembly – and to resell the new article that has been created in this way.

3. More far-reaching rights of disposal such as pledging or assignment as security, shall only be permitted with the supplier's written consent. If the reserved goods are pledged, then the buyer has to immediately notify the supplier by sending him a [certified] copy of the pledging agreement. The same provision shall apply if the supplier's right has been particularly affected adversely by a third party. The buyer has to carry out interventions at his own cost.

4. If the buyer as the reseller disposes of the reserved goods on a credit basis, then he shall assign to the supplier his future debt claim herewith and he shall undertake to agree a reservation of ownership as far as he is concerned, which safeguards the supplier's rights. He has to notify the supplier about it and to submit a declaration of assignment in duplicate upon demand.

5. The following provisions shall apply in cases that are referred to by sub-clause 2b.

a) The supplier shall acquire joint ownership in the new article, which corresponds proportionately with the value of the contribution in the new article's total value that was performed by his delivery.

b) If the buyer disposes of the new article on a credit basis, then he shall assign to the supplier his future debt claim herewith against his own buyer (i.e., his own customer) in the corresponding proportion of value, which shall be calculated at the moment when this disposal takes place.

c) He [i.e., the buyer] shall undertake in this case to safeguard the joint ownership that was acquired according to sub-clause a) of this article in his corresponding proportion of ownership according to sub-clause b) of this article, by means of his own reservation of ownership.

13. Exclusion of excess security

The assigned debt claims shall only serve as the supplier's security for the amount of value in each delivery item that is still subject to the reservation of ownership. The supplier undertakes to retransfer the assigned debt claims upon the buyer's demand; insofar as this value is exceeded.

14. Place of jurisdiction¹ and place of performance²

The contract must be fulfilled at the supplier's head office³, which is situated in the place of jurisdiction.

15. Transferability of the contract

The contractual rights of both parties are only allowed to be transferred by mutual agreement.

16. Final provision

If individual provisions [of this contract] are [or become] legally inoperative, then the [remaining provisions of the] contract shall remain binding otherwise.

¹ = domicilium disputandi

² = domicilium executandi

³ = legal domicile / registered office