

These conditions are an integral part of all our quotations for and contracts on supplies and services, including current and future business relations. Deviations from these conditions of supply and services, particularly business conditions of the customer, are deemed agreed only if they have been expressly confirmed in writing by our company.

- 1. Conclusion of Contract/Documents**
- 1.1 Our cost estimates are not binding.
- 1.2 Contracts made with our company shall be considered in effect only after we have given written acceptance of contracts/orders received or after we have supplied the goods or rendered the services ordered by the customer. The same applies accordingly to the customer's requests with regard to contract amendments or changes.
- 1.3 Any information given and any documents made available to the customer only contain approximate values customary in this branch of business. Stated measured values (e.g. performance values, power requirements, ranges, measuring accuracy etc.) are understood to apply only in the absence of effects of possible interferences or other disturbances from the environment and are binding only if they expressly become a subject matter of the contract.
- 1.4 We retain title, copyright and any other rights to all documents stated above. Without our written approval, the above documents may not be used in any way for purposes not connected with the respective contract; in particular, they may not be made available to third parties. Upon request, they must be returned to us without delay.
- 2. Software Services and/or Consultancy Services**
- 2.1 In the case of contracts according to which we are obliged to render software services and/or consultancy services, the services to be rendered by us are defined in a written statement of work (e.g. statement of work or specification). In the case of series and standard software, our delivery specification is considered the statement of work.
- 2.2 We retain title and all rights in the work results; the customer is entitled to use them only for his own purposes within the scope of the contractual provisions.
- 2.3 Handing over of program documentation for user software can be requested by the customer only if the software has been especially developed for him, if handing over has been expressly agreed and if the customer has paid all costs and fees within the scope of the order.
- 2.4 Any data and documents made available to our company will be held in safe custody by us with due diligence. Copies for purposes of reconstruction/repair must be kept by the customer.
- 3. Prices.** Our prices are understood to be in Euro ex relevant plant, excluding costs for packaging, other incidental costs (e.g. installation and commissioning) as well as turnover tax at the applicable statutory rate.
- 4. Payments**
- 4.1 All payments must be made to us, without any deduction, within two weeks after receipt of our respective invoice.
- 4.2 If payment by instalments has been agreed and if the customer either is in delay, in whole or in part, with two successive instalments and the outstanding payment amounts to at least 5% of the total contract price or if the customer offends against his obligations from the agreed retention of title (ref. para. 9), the total residual amount still to be paid by the customer falls due immediately.
- 4.3 Bills of exchange are accepted by our company only after previous written agreement and only subject to their discountability as well as on account of performance. The customer must bear all discount charges and other incidental costs and must immediately reimburse us these costs. Values of bills and cheques are credited only after the equivalent amounts have been made available to us unconditionally.
- 4.4 If the customer delays in payment, in part or in whole, we are entitled – irrespective of any other rights of our company – to interest on the delayed payment as of this date, amounting to 8 percentage points above the relevant applicable base interest rate. We reserve the right to assert other damage due to delay.
- 5. Assignment/Retention/Setoff**
- 5.1 Our customer is not entitled to assign any claims – except monetary claims – against us to third parties without our written approval.
- 5.2 The customer may not offset any counterclaims against our claims against him except and unless such counterclaims are undisputed, legally established or ripe for judgment (proved).
- 5.3 The customer only has a right of retention, insofar as this is based on the same contractual relationship.
- 6. Contractual Periods/Fixed Dates**
- 6.1 Delivery or execution periods agreed with us commence with the date of the written declaration of acceptance by our company.
- 6.2 In the case of changes or amendments to the supplies and services in the contracts attributable to the customer the contractual periods stated in the above para. 6.1 are prolonged reasonably.
- 6.3 Contractual periods and fixed dates are binding only if expressly agreed in writing. Force Majeure and other abnormal circumstances such as, in particular, labour disputes, government acts and transport disruptions – irrespective of whether they occur within our own company or at our vendor's – will relieve us from our obligation to supply/render services either for the duration of their effects or altogether if it becomes impossible to render the services at all. If such a hindrance exists for more than 6 months, the customer is entitled to withdraw from the contract. Under these circumstances, any penalty possibly agreed upon shall be considered not forfeited.
- 7. Taking over/Acceptance**
- 7.1 Upon due date the customer must accept or take over our supplies/services immediately after having been requested to do so by us.
- 7.2 If the customer does not accept/take over the supplies/services in conformity with the above para. 7.1, our company is entitled, after unsuccessful reminder, to withdraw from the contract after expiration of a reasonable period fixed by us and to claim damages, i.e. at our option either in the form of a reimbursement of the loss incurred to us or – without proving the loss – at the amount of 10% of the agreed price. It will be left to the customer, in particular, to furnish proof of the fact that we have incurred no or only a minor loss.
- 8. Transfer of Risk**
- 8.1 We are entitled to make partial supplies and/or to render partial services as long as no recognisable interest of the customer is opposing to it.
- 8.2 The risk for our supplies and services passes to our customer with the acceptance or taking over of such supplies/services; however, in the case of supplies, the risk passes at the time such supplies leave the relevant plant of our company at the latest (ex works / Incoterms 2000). This also applies to partial supplies/services even if we have undertaken further services (such as transport, installation, assembly and/or commissioning).
- 8.3 If the taking over/acceptance of supplies, or their leaving the relevant plant of our company, is delayed for reasons attributable to our customer, the risk passes to the customer upon futile expiration of the period fixed by us as per above para. 7.1 at the latest.
- 8.4 If goods are taken into safe custody for the customer by our company, the customer assumes the costs and risk for such custody. Unless agreed otherwise, the customer is obliged to pay to us for such storage the ordinary fee of a commercial storage company.
- 9. Retention of Title**
- 9.1 We reserve the right of property in the goods supplied by our company until receipt of all payments from the business relationship with the customer. In the case of a behaviour of the customer not conforming to the contract, particularly in the case of a delay in payment, we are entitled to recover the goods subject to retention of title subsequent to withdrawal from the contract.
- 9.2 The customer is obliged to treat goods subject to retention of title with care; in particular, he is obliged to adequately insure, at his own expense, such goods at their reinstatement value against damage by fire, water and theft.
- 9.3 In the case of attachment or other interventions by third parties, the customer must immediately inform us in writing. Unless third parties are incapable of reimbursing us judicial and extrajudicial costs for an action as per § 771 ZPO, the customer shall be liable for any expenses defrayed by our company.
- 9.4 The customer is entitled to sell or dispose of goods subject to retention of title within the course of ordinary business; however, the customer hereby assigns to us in advance any claim to the amount of the invoice total (including value added tax) of our claim which the customer may have against his clients or third parties, i.e. irrespective of whether the goods subject to retention of title were resold without or after processing. The customer will remain entitled to collect such claim even after assignment. Our power to collect such claims ourselves remains unaffected. However, if this is the case, the customer shall immediately make known to us the assigned claims and their debtors, provide any information and documents necessary for collection of such claims and inform the debtors (third parties) of the assignment.
- 9.5 Any processing or conversion by the customer of the goods subject to retention of title will always be done on our behalf. If the goods subject to retention of title are processed with other goods which are not our property, we will acquire co-ownership in the new product at the value of the goods subject to retention of title in proportion to the other processed goods at the time of processing. Furthermore, the product resulting from such processing is subject to the same provisions that apply to the goods supplied subject to retention of title. Also, the new product is held in safe custody by the customer on our behalf.
- 9.6 If the goods subject to retention of title are mixed inseparably with other goods which are not our property, we will acquire co-ownership in the new product at the value of the goods subject to retention of title in proportion to the other mixed goods at the time of mixing. If the mixing is such that the customer's product must be considered the main product, it is understood that a proportionate co-ownership is assigned to us by the customer. The resulting sole or co-ownership is held for us by the customer. The fourth sentence of para.9.5 shall apply accordingly.
- 9.7 To secure our claims against him, the customer assigns to us also such claims which arise against third parties due to the combination of goods subject to retention of title with real estate.
- 9.8 The above-mentioned assignments do not include any respite for payments liable to be made by the customer.
- 9.9 Upon the customer's request, we agree to release any securities to which we are entitled to the extent that the value of our securities exceeds the claims to be secured by more than 20%; the selection of the securities to be released shall be at our option.
- 10. Defects**
- 10.1 The following applies in the case of defects of quality:
- 10.1.1 The customer shall notify us of any defects of quality immediately after their discovery.
- 10.1.2 First, we are to be given the opportunity to provide for rectification of the defect within a suitable period of time, i.e. at our option either by elimination of the defect, the delivery of goods free from defects or by manufacture of a new product.
- 10.1.3 If the rectification definitely fails, it can not be expected from the customer or is possible only with excessive cost/expenses, the customer is entitled to withdraw from the contract or to reduce the remuneration – irrespective of any other damages.
- 10.1.4 Any claims of the customer against our company due to expenses required for the purpose of rectification, in particular costs for transportation, travelling, labour and material, are excluded as far as the expenses increase due to the fact that the subject matter of supply/services has been transferred to a place other than the branch office of the customer, unless such transfer corresponds to the intended use of the subject matter of supply/services.
- 10.1.5 Legal claims of the customer against our company under a right of recourse exist only in so far as the customer has not reached any agreements with his clients beyond the legal warranty claims and rights. Furthermore, the above para. 10.1.4 shall apply accordingly as far as the scope of the customer's claim against our company under a right of recourse is concerned.
- 10.1.6 In the case of notices of defects, payments of the customer may be withheld to an extent proportionate to the defects in quality found.
- 10.2 The following applies in the case of defects in title:
- 10.2.1 Unless agreed otherwise, we are obliged to render the supplies/ services free from third parties' industrial property rights and copyrights (hereinafter: „protective rights“) only in the country of the place of delivery. In the case of justified claims raised by third parties against the customer on the grounds of the infringement of protective rights due to supplies/services rendered by our company and used in accordance with the contract, the following shall apply:
- 10.2.2 We will, at our option and cost, either obtain a right of use for the relevant supplies/ services, or we will change the supplies/services so that the protective right is no longer infringed, or we will replace the supplies/services. If this is impossible for us at reasonable terms/conditions, the customer shall be entitled to the statutory rights to claim rescission of the contract or to reduce the amount payable – irrespective of any other damages. Otherwise, para. 10.1 shall apply accordingly.
- 10.2.3 Claims of the customer on the grounds of the infringement of protective rights are excluded if he is responsible for such infringement of protective rights or if the infringement of protective rights has been caused by special requirements of the customer, by an application unforeseeable for our company or by the fact that the supplies/services are changed by the customer or used together with products not supplied by our company.
- 10.3 The period of limitation for defects of quality and in title amounts to one year, commencing with the delivery. This does not apply if and in so far as longer periods of limitation apply as per §§ 438 para. 1 No. 2, 479 para. 1, 634 para. 1 No. 2 of BGB (German Civil Code), if and in so far as there has been a malicious silence with regard to the defect or if one of the cases of liability stated in para. 11.1 below applies.
- 10.4 Our obligation to pay damages depends on para. 11 stated below.
- 10.5 Used goods are supplied by our company – subject to para. 11 stated below – excluding any liability for defects of quality and in title.
- 10.6 The above stipulations are not connected with a shifting of the burden of proof to the disadvantage of the customer.
- 11. Damages and Liability**
- 11.1 Claims for damages and compensation of expenses (hereinafter „damages“) of the customer against our company are excluded, irrespective of the cause in law, unless they are based on the provisions of the Product Liability Act, on an intentional or grossly negligent violation of contractual or legal obligations on our part, on injuries to health and physical injuries of the customer due to a violation of duties for which we are responsible, the take-over of a guarantee for the existence of a characteristic feature or the violation of essential contractual obligations by our company.
- 11.2 Damages for the violation of essential contractual obligations shall be limited to foreseeable damage which is typical for the contract, unless it is based on intent or gross negligence, on the assumption of a liability with regard to injuries to health or physical injuries or due to the taking-over of a guarantee for the existence of a characteristic feature.
- 11.3 A violation of duties by our company is put at on a level with such a violation by our representatives or persons employed in performing our obligation.
- 11.4 Para. 10.6 shall apply accordingly.
- 12. Secrecy**
- 12.1 All documents and information received by the customer during and for the purpose of the performance of a contract are to be treated confidentially by the customer as long as they do not become generally known.
- 12.2 These obligations remain effective even after termination of a contract and are to be imposed also upon third parties if the disclosure of documents and information to them is permitted.
- 13. Place of Jurisdiction/Applicable Law**
- 13.1 The sole place of jurisdiction for both parties with regard to all disputes directly or indirectly arising from the contractual relationship – also from documentary deeds, drafts and cheques – shall be Bremen (courts of the City of Bremen). At our option, however, we remain entitled to assert claims against the customer at the courts which have jurisdiction over the customer's place of residence, registered office or assets.
- 13.2 German law shall apply, excluding the convention of the United Nations on contracts concerning the international sale of goods dated 11.04.1980 (UNCITRAL / CISG).
- 14. Severability**
- 14.1 Should individual provisions of a contract on supplies and services, of which these provisions are an integral part, be or become invalid, this will not affect the validity of the remaining provisions of the contract.