

General Terms and Conditions of Sale and Supply for Machines and Spare Parts

Valid from 09/2010

I. General, scope of application

1. We sell and supply subject solely to the following Terms and Conditions of Sale and Supply. We will not be bound by any terms and conditions of the customer unless they coincide with our Terms and Conditions of Sale and Supply and hereby expressly refuse to acknowledge any terms and conditions of the customer which differ from our Terms and Conditions.
2. These Terms and Conditions of Sale and Supply apply to any further orders even if no further reference is made thereto.
3. Agreements which differ from or expand the present Terms and Conditions are only valid if they have been concluded in writing or confirmed by us in writing.
4. The following Terms and Conditions shall apply only to persons who are entrepreneurs as defined by German law (*Unternehmer*) and to legal entities under public law and special public funds.
5. Samples, estimates, drawings or similar information of a physical nature shall remain our property. We shall retain copyright in any such information which is stored electronically. Such information may not be disclosed to third parties.

II. Offers and prices

1. Our offers and all parts thereof are non-binding unless expressly stated otherwise.
2. With offers which have been designated binding, a contract arises if the customer accepts our offer within 2 weeks of the date of the offer. We will not be bound by the offer once this period has expired.
3. Our prices are ex works. They do not include packaging, freight insurance or other dispatch costs. They are net prices and are subject to statutory value added tax at the applicable rate.
4. Unless otherwise agreed, payment shall be made to us without deductions and charges in three instalments: 1/3 of the contract price on receipt of confirmation of order, 1/3 on notification that the principal components are ready for dispatch and the balance 30 days after passage of risk.
5. The customer shall only have a right of retention or right to set off against our claims to the extent that such claims are acknowledged or have been ruled final and absolute by a competent court.

III. Delivery and delivery period

1. Part shipments may be made if the customer can be reasonably expected to accept them.
2. Any delivery times which we indicate are non-binding and approximate unless they are expressly stated as being firm dates. These are only binding if the customer has provided us with all the documents, permits, releases and agreed payments which we need to execute the contract in due time. If the customer fails to meet its duties to cooperate the delivery time will be extended accordingly.
3. The delivery period shall begin at the earliest when the order confirmation is received by the customer. It shall be deemed to have been met if the item or items to be supplied have left the manufacturing plant or if notice that they are ready for shipment has been issued before the period has expired. If the delivery period is expressed in days these shall be deemed to be working days.
4. If after the contract has been concluded the customer requests modifications to the order which affect the delivery time, any delivery periods must be agreed anew; in the event of doubt the delivery period shall be extended accordingly.
5. If shipment is delayed for reasons for which the customer is responsible, the customer shall bear any costs incurred by the delay but at least storage costs of 0.5 per cent of the net invoice amount for each month commenced, beginning one month after notification that the goods are ready for shipment; the customer has the right to prove that the actual costs are less. We are entitled to dispose of the products to be delivered provided that we have previously set a reasonable acceptance period and to supply to the customer again with correspondingly longer delivery periods. This will have no effect on any additional statutory rights which we may have in the event of a default in acceptance (such as withdrawal, damage claims).
6. In the event of force majeure or other circumstances for which we are not responsible (such as administrative measures, strike, lock-out, disruption to operations, problems with procurement of materials, disruption to transport, etc.) delivery periods – even if they have been confirmed – shall be extended by a reasonable period. This shall also apply if the above circumstances arise after default has arisen. If such circumstances make it impossible or unreasonable for us to perform we shall be released from our duty to render performance. If an event of force majeure lasts for more than 8 weeks each party to the contract is entitled to withdraw.

7. If we fall into default with supply the customer shall only be entitled to compensation of any type subject to Section IX. of these Terms and Conditions of Sale and Supply.

IV. Passage of risk

1. Risk passes to the customer when notice that the products are ready for shipment is issued, at the latest when the products leave the manufacturer's factory. This also applies to part shipments and if we have assumed shipment costs or agreed to deliver and/or assemble the products.
2. Machines will be supplied unassembled if this is necessitated by the method of shipment and the transport risk.
3. The shipment will only be insured for transport damage and other risks at the express request and cost of the customer.
4. If, in an individual case, it has been agreed that the customer is required to accept the products, the customer may not refuse acceptance in the event of an immaterial defect. If acceptance is agreed or prescribed by statute, the customer is obliged to accept the products after delivery or assembly. In any event the shipment shall be deemed to have been accepted if the customer starts production using the products.

V. Assembly

1. We will only carry out assembly subject to agreement on the duration and costs. In any event the customer shall provide and bear the costs of the following: auxiliary staff and, if necessary bricklayers, metalworkers, and other specialist tradesmen, the number to be as we deem necessary, all earth-moving and foundation work including the necessary building materials, the equipment needed for assembly and commissioning such as hoists and necessary documentation, cement, plaster and sealants, lubricants, heating, lighting and fuel including the necessary connections.
2. Assembly personnel shall not be made available until called on by the customer and when customer has confirmed that our shipment has arrived and that everything is ready.
3. The assembly personnel shall be given written confirmation of hours worked and work performed and that the products have been received in perfect condition.
4. Any waiting time incurred by the assembly personnel for which we are not at fault and their employment with work other than that for which we have been contracted shall be charged separately to the customer.
5. If the customer fails to fulfil the cooperation duties set out above or if we are prevented from carrying out the work entrusted to us by the customer owing to other circumstances which are attributable to the sphere of risk of the customer, we may demand reasonable compensation for any additional costs caused hereby in addition to our remuneration. In such an event we will deduct any expenses which we ultimately save or which we have been able to acquire through other orders.

VI. Acceptance of additional services

1. Any work which we have carried out and portions of work which have been completed shall be inspected and accepted by the customer as soon as they have been completed.
2. Items which we have worked on which have been commissioned or otherwise used without any complaint having been reported shall be deemed as having been accepted.
3. If the customer does not accept the work within a reasonable deadline set by us, although it is required to do so this is equivalent to acceptance. This also applies to part work which we have carried out.

VII. Reservation of title

1. We retain title in the products until all claims associated with the business relationship have been fulfilled. This shall apply even if some or all claims have been included in a current account, the balance has been established and acknowledged.
2. In the event of serious breaches of contract or a material deterioration in the customer's financial situation, the customer shall at our request return the products to us at its cost. The customer hereby consents to allow us to collect the products concerned from its premises in such an event.
3. If the products are combined or mixed with other materials to form a new single item and if that other item must then be regarded as the principal item, we are then entitled to pro rata co-title in the new item created, such co-title being in the ratio of the value of the products to the other mixed or combined constituents at the time of such combining or mixing. The customer hereby assigns such co-title to us here and now. We hereby accept this assignment.

4. Any processing of or modification to the products carried out by the customer shall always be carried out for and on behalf of us. If the products are processed using other items which do not belong to us, we shall acquire co-title in the new item in the ratio of the value of the products to the other processed or modified items at the time of processing or modification.
5. If the customer re-sells the products as provided for in the contract, the customer hereby assigns to us any claims which arise against its customers from re-sale of the products together with all ancillary rights until such time as all claims have been settled. At our request the customer shall, if circumstances so demand, notify third-party purchasers of the assignment and provide us with any information and documents which we need to assert our rights.
6. The customer agrees that if it sells the products it will reserve title in it until the full purchase price has been paid and agrees that if reservation of title should lapse owing to resale, combination, processing or mixing title in the new item and the ensuing claim will replace reservation of title.
7. Retraction of the products by us does not constitute withdrawal from the contract. All claims are due for payment immediately. This applies in particular to an application for the institution of insolvency proceedings on the customer's assets.
8. If the realizable value of the securities in our favour exceeds the secured claims by more than 10 percent solely on the basis of this reservation of title provision or in conjunction with other securities, we shall – if so requested by the customer – release that portion of securities in excess of the realisable value of 110 % of the reserved/secured title. We may select the securities which we are to release.
9. Customer shall insure the products for all insurable losses. It shall assign to us any claims which it may have under insurance policies in advance and at our request shall provide evidence that such policies have been concluded.
10. The customer shall notify us without undue delay of any attempts by third parties to exercise claims on the products or claims in lieu thereof providing the relevant documentation.
11. If the jurisdiction in whose territory the products are located does not provide for the reservation of title as set out in this section but said jurisdiction does permit us to reserve other rights in the products, we may exercise all rights of that type. The customer shall cooperate with us with regard to any measures which we wish to take to protect our title rights or – in lieu thereof – to protect a similar right in the products.
12. In the event of seizure or any other measure taken by third parties in relation to the products, the customer shall notify us in writing without delay so that we can initiate legal proceedings pursuant to § 771 of the German Code of Civil Procedure (*Zivilprozessordnung*) in order to prevent execution of any court order. If the third party is not able to reimburse us for costs incurred in or out of court pursuant to § 771 German Code of Civil Procedure, the customer shall be liable for our loss.

VIII. Warranty

1. We provide a warranty for legal and quality defects as described below excluding any rights over and above that.
2. We shall repair or replace, at our discretion, parts which were defective at passage of risk. Unless otherwise agreed, the attributes of the products which are due under the contract shall be solely as set out in our product specification in the version which was valid when the contract was concluded. Reports of defects and complaints must be made in writing. Parts which are replaced become our property and must be returned to us.
3. The warranty period shall be 12 months from delivery or, if so agreed or provided for by statute, from acceptance of the products.
4. The customer shall give us sufficient time and opportunity – after consultation with us – to carry out whatever repair and replacement we deem necessary; otherwise we shall not be liable for any damage arising therefrom.
5. In case of replacement we shall bear the costs of the replacement parts including dispatch to the place of delivery originally agreed, but not for dismantling and installation or any other expenses. If the customer wishes the replacement part to be sent to a different place or

wishes us to render performance in situ, the customer shall assume any additional costs thereby incurred.

6. If repair or replacement is impossible or has failed at least twice, the customer may reduce the purchase price or withdraw from the contract. If the defect is only immaterial the customer is only entitled to reduce the contract price.
7. We accept no liability for defects or losses caused by unsuitable or improper use, faulty assembly or commissioning, excessive use, natural wear and tear, faulty or negligent treatment, unsuitable operating materials, chemical, electro-chemical or electrical influences (in as far as these are not required by contract) which arise through no fault of ours.
8. If the customer or third parties carry out repairs without our express consent we shall not be liable for making any further repairs to the products unless the customer can prove that its own attempt at repair was properly carried out and did not affect the defect which then arose.

IX. Liability

We shall not accept liability for claims for damages for direct and indirect losses including incidental or consequential loss, irrespective of legal grounds. This shall have no effect on claims of the customer if (i) the loss is attributable to intent or gross negligence on the part of us, our legal representatives or vicarious agents, (ii) a breach of duty on the part of us, our legal representatives or vicarious agents led to bodily injury or damage to health, (iii) we fraudulently concealed a legal or quality defect or to the extent that we assumed a guarantee, (iv) we have mandatory liability, for example under the German Product Liability Act (*Produkthaftungsgesetz*), or (v) the loss was attributable at least to negligent breach of material contractual duties on the part of us, our legal representatives or vicarious agents fulfilment of which is essential for due implementation of the contract and on which the contractual partner can reasonably expect to be able to rely ("cardinal duties"). To the extent that we, our legal representative and vicarious agents have not acted with intent, our liability is restricted to foreseeable loss typical of this type of contract.

X. Use of software

1. If the scope of delivery contains software the customer shall be granted a non-exclusive right to use the software supplied including the associated documentation. The software is provided for use on the delivered product. It may not be used on more than one system.
2. The customer may only reproduce, modify, translate the software or convert it from the object code to the source code to the extent permitted by statute (§§ 69 a subsequent German Copyright Act – *Urhebergesetz*). The customer undertakes not to remove manufacturer's data, including but not limited to copyright data, or to alter this without our prior express consent.
3. All other rights in the software and the documentation including copies thereof shall remain with us / the software supplier. Sub-licences may not be granted.
4. We warrant that the software provided does not contain reproducible faults. This warranty only applies provided that the software is used in manner consistent with the contract.

The customer shall notify us of any programming errors without undue delay. We shall remedy any losses reported to us. If it proves impossible to remedy an error we will have to develop a workaround. If we are unable to meet these obligations the customer may, at its own discretion, either reduce the agreed remuneration or withdraw from the contract.

We do not provide any warranty that the software provided meets the customer's specific requirements.

XI. Miscellaneous

1. Place of performance for all obligations of both contracting parties shall be Freudensstadt. Place of jurisdiction for all disputes arising out of this business relationship shall be our place of business (Freudensstadt). Nevertheless, we are entitled to sue the customer at its place of business.
2. German law shall apply exclusively. The parties expressly agree that the conflict rules of private international law and the Convention on Contracts for the International Sale of Goods dated 11.04.1980 (CISG) shall not apply.