



GENERAL CONDITIONS OF SALE AND DELIVERY

1. General information

The following conditions are valid for all our offers and contracts, as well as for all future orders and deliveries.

Changes and additions are only binding if they are confirmed by us in writing; an explicit rejection of deviating terms of the buyer is not necessary.

2. Offer and acceptance

Our offers are always subject to change unless, by way of exception, they are explicitly designated as binding. A contract first comes into existence when orders directed to us or our representatives are confirmed by us in writing within 4 weeks.

The descriptions and information on price, weight, size, performance, among other details, in all our offers, catalogues, brochures, circulars, advertisements, illustrations, price lists, etc. are provided as best estimates, but without any liability for us.

The buyer is required to inform us, with no prompting on our part, of the properties and behaviour of the material to be used as well as of necessary or stipulated safety devices. The performances specified by us are based only on experimental and empirical values. The assessment of these values as they apply to the particular buyer is not always possible with precision, since the chemical and physical states and operating conditions are difficult to match. In this regard, statements made, in particular about performance, continuous operation and other pledges, are therefore non-binding. If not explicitly guaranteed or individually agreed upon, we are not liable for properties, especially the processing options of the raw materials used.

3. Prices

Our prices are valid, as long as not otherwise explicitly agreed upon, ex factory excluding packaging - which is calculated as part of the original cost and is not retracted - and all accompanying charges. The prices also include value added tax in the respective legally specified amount at the time of invoicing. Prices for special made to order items, see section 15, paragraph 2.

4. Conditions of payment

As long as no other agreement has been made, the contract price is to be paid to us (as is customary in the engineering industry) in cash without any deductions as follows: 30% pre-payment immediately after receipt of the order confirmation, 60% upon notification of shipment readiness and prior to shipping, 10% within 30 days calculated from the invoice date. Interest is not paid on pre-payments. A bill of exchange or check payment, when not otherwise agreed upon, is accepted by us under the usual provisions as conditional payment, free of charge. We assume no liability for the timely submission and protesting of such documents.



GENERAL CONDITIONS OF SALE AND DELIVERY

In the case of unauthorised transgressing of the agreed upon payment deadlines, without a special reminder needing to be issued, penalties for default are incurred. We additionally reserve the right to require pre-payments. Subject to a claim of further damage, should the buyer fall behind schedule in his or her payment obligations – also as concerns other existing contracts with us - in regard to interest, costs and principal, we are authorised to do the following:

- Calculate interest penalties of 5% over the respective basic interest rate;
- Decline further deliveries and commensurately delay agreed upon delivery schedules until the outstanding amounts - from other contracts as well - are paid in full.

Incoming payments are first applied to interest, then to costs and finally – according to our determination - to the principal.

5. Delivery terms and deadlines

Binding agreements regarding delivery or service periods begin on the day on which agreement has been brought about between us and the buyer on all points of the contract, confirmed in writing. The keeping of the delivery terms requires the timely submission of all documents the buyer is to deliver and the observance of the agreed upon payment conditions and other obligations. The period of delivery is commensurately extended if these requirements are not punctually met, or in cases described under section 15, paragraph 3, in these terms of sales and delivery.

If the supplier falls in arrears and the orderer is thereby inconvenienced, the orderer then has the right to demand a lump sum reimbursement for the delay. This amounts to 0.5% for each full week of delay, up to a maximum of 5% of the value of the portion of the total delivery which cannot be used in time or cannot be used according to the contract.

If a partial delivery is delayed or not possible, the buyer is not entitled to withdraw from the entire contract or to demand reimbursement for non-fulfilment of the entire contract, unless a partial fulfilment of the contract is of no economic worth to the buyer.

Further claims arising from delivery delay are decided exclusively according to section 11 b).

6. Acts of god, unforeseen obstacles

In cases of acts of god, measures taken in regards to work disputes (strikes and lockouts in particular), as well as the appearance of unforeseen obstacles which lie outside our sphere of control (shortages of transportation means, raw materials and auxiliary supplies; rejection of crucial workpieces; interventions by authorities; restriction of energy consumption; etc.), we reserve the right to commensurately extend the delivery period or, at our discretion, to withdraw from the contract. This also applies when the circumstances are experienced by subcontractors.

We further reserve the right, following appropriate informing of the buyer, to withhold our deliveries or delay them if economic or political conditions occur that could hinder safety of delivery in the customer's country. This includes unrest, strikes, suspending of import licences, prohibitive customs duties, import tax hikes and the like, the exception being if the buyer takes



GENERAL CONDITIONS OF SALE AND DELIVERY

immediate measures which eliminate these dangers.

The buyer is to be informed of the onset and end of such events in writing as soon as possible. A delay which falls under section 5 in these terms is not among the indicated cases.

7. Scope of delivery

The scope of our deliveries and services is noted in our order confirmation. We reserve the right to undertake structural modifications and other technical improvements and adaptations of offered or ordered articles until the time of their shipment, with no prior approval from the buyer, providing the quality, performance, function or other essential technical data is not thereby impaired.

The buyer is to inform us of safety devices required as protection against hazards resulting from use of the delivered article, or which are legally stipulated or prescribed by authorities. They are supplied at the buyer's cost once agreement has been reached on the type and scope of the safety devices to be delivered.

8. Shipment and transfer of risk

If no special instructions are given, we decide on the shipment according to our judgement without responsibility for the cheapest and fastest option. We have the option of insuring the shipment - at the buyer's cost - but are not obligated to do so.

Partial deliveries are permitted.

The buyer is under obligation to also accept articles delivered with unsubstantial flaws.

For delivery or service ex factory, the risk is assumed in any case by the buyer upon shipment. In other cases, the Incoterms apply in regards to the transfer of risk.

If the shipment is delayed at the buyer's request or due to reasons for which we are not responsible, the buyer assumes the risk incurred for the time of the delay. We are required however to extend the insurance at the buyer's cost if so desired. The buyer bears the cost of the storage with the shipper (to which BEKUM reserves the right) or storage at BEKUM (which is set at a flat rate of 0.5% of the invoice amount per month).

9. Reserved ownership

We retain the ownership of property for all goods delivered by us until payment of all our existing and future claims from the business relation, including all accessory claims (packaging, freight, shipment, assembly and installation, commissioning, as well as interest, discount charges, etc.), particularly those of any current account balances. The surrendering of a bill of exchange or check does not apply as payment until the note has been redeemed in cash.

In the course of ordinary business, the buyer may link or intermingle the reserved ownership goods with goods not belonging to us. In this case, the buyer has then ceded to us ownership or co-owner rights to the intermingled holdings or new article, which are retained for us in the



GENERAL CONDITIONS OF SALE AND DELIVERY

buyer's safekeeping, whereby our co-owner share reflects the value of our billing claims for the linked or intermingled delivery in proportion to the billing value of the remaining articles.

The buyer may neither bond the reserved ownership goods nor pledge them as a security. In every case of a further sale, the buyer cedes to us all claims against a third party which arise from this further sale. We accept the cession. The buyer is to inform us of garnishments and seizures without delay. If the value of the existing collateral for our claims rises more than 20% overall, we are obligated to either retransfer or return collateral of our choosing if the buyer so requests.

The buyer is required to properly insure the items under the terms of reserved ownership, and to supply us with proof of this insurance. If the buyer does not fulfil this obligation, we reserve the right to purchase such insurance at the buyer's cost.

In the case of default in payment, we reserve the right to issue the buyer an extension of 14 days, after which we may decline his or her payment and demand reimbursement due to non-fulfilment, take the items remaining under reserved ownership into our possession and sell them in the open market for the best possible price.

The buyer is under obligation to provide us with all the information needed for the assertion of our rights and to allow us access to his or her operation facility.

10. Warranty claims

For deliveries with defects, under which is also included the absence of agreed upon qualities, and of which the buyer is required to notify the seller within 10 days in writing and provide detailed evidence (for hidden defects, within 10 days of their discovery, but within the legal warranty period), we assume liability to the exclusion of all broader claims as follows:

- a) All those parts whose usefulness has been substantially compromised due to circumstances the buyer is required to prove occurred prior to the transfer of risk, especially due to poor materials or poor manufacturing, are, at our discretion, to be either repaired or replaced at no cost.

The service location for the repairs is Berlin. The buyer can only demand one of our technicians be sent if substitution of the damaged part cannot be reasonably expected, or if, due to the absence of a specialised firm at the buyer's location or immediate surrounding area, the sending of one of our technicians is necessary.

From the direct costs arising from the repair or replacement part delivery, the supplier – in as far as the claim is determined to be justified – bears the cost of the replacement part including shipment. The supplier also bears the cost of any required furnishing of needed technicians and assistants, including travel expenses, providing no disproportionate charges to the supplier are thereby incurred.

- b) Liability for defects and damage due to the following is excluded: inappropriate or unprofessional use; incorrect installation or commissioning by the orderer or third party; natural wear; incorrect or negligent handling; use of unsuitable operation materials, especially regarding screws and pipes, replacement materials; use of plastic raw materials and additives with abrasive behaviour by admixture of glass fibres, mineral fillers or colour



GENERAL CONDITIONS OF SALE AND DELIVERY

concentrate materials with metal oxides like e.g. TIO2 and others; inadequate construction; unsuitable site; chemical, electrochemical and electrical influences (providing these are not attributable to us). The absence of safety devices for the agreed upon delivery obligations according to section 7 represents no defect; we therefore assume no liability for this.

- c) In all cases, we are to be allowed to make repairs; for this, suitable time and opportunity for making modifications which appear to us to be necessary and for delivering replacement parts is to be granted to us at no charge. If this is denied, we are freed from all liability. Replacement parts are to be returned to us free of charge.
- d) Should the buyer not reprehend defects within the stipulated period, or if the buyer autonomously undertakes unprofessional modifications or repair work without giving the seller the contractually agreed upon opportunity to do so, all claims against us are excluded.
- e) If the repair fails, despite repeated attempts and within a reasonable extension period, and replacement delivery is not possible, the buyer can demand either a reduction of the remuneration or that the contract be revoked.
- f) The buyer is required to observe the contract obligations above, particularly the agreed upon payment conditions. For claims from reprehended defects, the buyer is only entitled to retain the purchase price to an extent that is in proportion to the defects which appeared. The retention rights of the buyer due to claims arising from other contract relations (German legal codes §273 BGB, 369 HGB) is excluded.
- g) We provide no warranty for defects whose cause is attributable to the buyer's provided materials, devices (e.g. forms), machines and other objects.

11. Liability

- a) If the delivered article cannot be used by the buyer according to the contract, due to fault of the seller resulting from omissions or incorrect construction, or suggestions and advice occurring before or after the conclusion of the contract, or due to the non-fulfilment of other contractual accessory obligations - in particular, instructions for operation and maintenance of the delivered article - the regulations under sections 10 and 11.b are applicable in exclusion of further claims of the buyer.
- b) For damages that do not appear on the delivered article itself, the seller assumes liability based on whatever legal grounds – only in the following cases:
 - ba) intentional damage,
 - bb) gross negligence on the part of the owner / agent or head managers
 - bc) culpable injury to life, limb and health,



GENERAL CONDITIONS OF SALE AND DELIVERY

bd) defects which were fraudulently concealed or which were guaranteed not to appear,

be) defects in the delivered article, providing that the product liability law for personnel injury or material damages to privately used articles is adhered to.

In the case of fraudulent breach of essential contract obligations, the seller is also liable in cases of gross negligence of non-managerial personnel and in cases of slight negligence, in the latter case limited to contractually typical, reasonable foreseeable damage.
Further claims are excluded.

12. Limitations

All claims of the buyer – based on whatever legal grounds – are limited to 12 months. For damage claims according to section 11.b, the statutory limits apply. They also apply to defects of structure, or for delivered articles which have been used in the typical manner for a structure and caused the defect.

13. Right of withdrawal

We reserve the right to withdraw from the contract if, after conclusion of the contract, circumstances become known to us which lead us to believe that we will not receive the buyer's full and punctual pay in return for our service. An exception to this is if the buyer, 10 days prior to the delivery not yet due, submits to us a bank statement certifying that the fulfilment of the contract is guaranteed.

14. Resale

The machines and systems delivered by us are for the sole use of the buyer and not intended to be resold. A reselling is only permitted with our explicit prior written consent.

15. Special made to order items

In the case of special made to order items (especially form orders), which we specially manufacture according to customer specifications, we are only liable for proper manufacture according to the latest standards in technology. We are under no obligation to check the diagrams, prototypes and other documents for their practicality, correctness and ability to be fulfilled.

The price for special made to order items specified by us at the conclusion of the contract is only an estimated price since the work and time required have not been finally fixed. We



GENERAL CONDITIONS OF SALE AND DELIVERY

correspondingly reserve the right, after completion of the special order, to determine the final price with regard to additional costs for unforeseeable technical changes or improvements.

If changes, improvements or other work has to be undertaken for special orders, particularly form orders, due to procedural or production problems whose cause does not lie with the buyer, all agreed upon deadlines for acceptance and delivery are postponed – in the case of specially made orders for entire systems: Acceptance and delivery deadlines for the entire system – in a reasonable time period.

16. Use of software

Providing that the software is included in the scope of delivery, the buyer is granted a non-exclusive right to use the supplied software including its documentation. It is for use with the particular delivered article designed for it. Use of the software on more than one system is prohibited.

The buyer may only reproduce, revise, translate or make conversions from the object code to the source code within legally stipulated limits (German copyright law §§ 69 a ff. UrhG). The buyer is under obligation to refrain from removing manufacturer specifications – particularly copyright – or changing them without the explicit prior written consent of the seller.

All other rights pertaining to the software and documentation, including copies, remain that of the seller or the software supplier. The allocation of sublicences is not permitted.

17. Copyright

For cost estimates, diagrams and other documents or information of a physical or non-physical type – also in electronic form – we reserve the ownership rights and copyrights; they are not to be made available to third parties. Diagrams and other documents belonging to this offer are to be immediately returned upon request. We do not hand out constructional diagrams; they are only to be used by employees hired by us for the implementation of the order.

The buyer is under obligation to refrain from using knowledge obtained during setup or operation, or from delivered diagrams or documents regarding the construction of our systems and machines, for the purpose of developing further models of identical or similar systems for either personal or third party application, and to further refrain from making these diagrams and construction knowledge available to third parties. The buyer may likewise by no means produce any diagrams of our systems. The construction of identical or similar systems by the orderer requires a special agreement with us on a case to case basis. The buyer is liable for any abusive or unlawful application and also assumes this liability for his or her employees.

18. Commercial patents

For the infringement upon commercial patents, the seller is liable only within the limits of the following regulations and if the buyer immediately informs the seller of claims from the patents that third parties make against the buyer, and in the handling of these claims and the pursuance of his or her rights the buyer proceeds with the understanding of the seller; otherwise, the seller is freed of obligations.



GENERAL CONDITIONS OF SALE AND DELIVERY

If an infringement of third party patents occurs from the delivered article itself and the buyer is therefore absolutely prohibited from using the delivered article in whole or in part, the seller, providing he or she is not without liability based on the following clauses, optionally either agrees to procure for the buyer the right to use the delivered article or to arrange a non-patented article or to replace the delivered article with another of corresponding performance capability that does not infringe upon any patents. If this fails, the buyer can optionally demand a reduction of the purchase price or that the contract be revoked.

Further liability claims according to section 11 b).

If deliveries are made according to diagrams, models or other information from the buyer, and the patents of third parties are hereby infringed upon, the buyer exempts the seller from all claims.

The seller is then also not liable if the claims of third parties due to infringement of patents involve the buyer's modifications to the delivered article or the installation of additional devices, the linking of the delivered article with machines or devices not supplied by the seller, or if the delivered article is applied or used in a procedure for which it was not intended or that infringes upon the patents of third parties.

In the case of contract violation of the buyer, his or her patents are not in opposition to a contractual selling of the product by the seller.

The buyer acquires no claims to the use of patents which affect the coaction of delivered articles with other articles.

19. Cessions – Compensation – Right of retention

The buyer may not cede to third parties claims arising directly or indirectly from the sales contract without our explicit consent. Compensation is – except for uncontested or absolutely ascertained claims – not permitted. The assertion of the right of retention is – except in the case of section 10 d of these terms – excluded.

20. Place of delivery and jurisdiction

The place of delivery and jurisdiction for all conflicts arising directly or indirectly from the contractual relations, also in particular for suits on bills of exchange, may, at our discretion, either be Berlin or the buyer's location.

21. Applicable law – partial invalidity

The application of German law is understood as agreed upon, regardless of whether German or foreign courts, or a court of arbitration, are called upon to make a decision.

If a court of arbitration is agreed upon without any special conditions, the arbitration code of the Zürcher Chamber of Commerce is valid.



GENERAL CONDITIONS OF SALE AND DELIVERY

Should individual pre-existing conditions be invalid or void, the validity of the remaining conditions is not affected. In the place of an invalid or void condition, the condition becomes effective that most closely resembles the invalid or void one in the commercial purpose for which it strives.

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