

General Terms and Conditions (GTC)

§1 – Scope of these Terms and Conditions

1. The deliveries, services and offers of the Seller are based exclusively on these Terms and Conditions. These Terms and Conditions also apply to all future business relations, even where they are not again expressly agreed. These Terms and Conditions shall be deemed as accepted with the acceptance of goods or services, at the latest. Counter-confirmations issued by the Customer with reference to its Terms of Business and/or Purchase Conditions are hereby expressly objected.
2. All agreements which are made between the Seller and the Customer for the purpose of the execution of this contract must be set out in writing in this contract.

§2 – Offer and Conclusion of Contract

1. The Seller's offers are subject to change and non-binding. Acceptances and all orders require the Seller's written or telex confirmation to be legally effective.
2. Drawings, images, dimensions, weights and other performance data shall only be binding if this has been expressly agreed in writing.
3. The sales employees of the Seller are not authorized to make any additional oral agreements or to make verbal assurances which go beyond the contents of the written agreement.

§3 – Prices

1. If not stated otherwise, the Seller shall be bound by the prices stated in its quotations for the duration of three weeks from the date of their issue. The prices stated in the Seller's order confirmation, plus the legally applicable value added tax, are relevant. Additional deliveries and services shall be calculated separately.
2. Unless otherwise agreed, all prices quoted are ex works, exclusive of packaging.

§4 – Period of Delivery and Performance

1. Delivery dates and delivery periods, which may be agreed as being binding or non-binding, must be stipulated in writing.
2. Delays in delivery and performance due to force majeure and circumstances which make delivery significantly more difficult or impossible for the Seller - including, without limitation, strikes, lockouts, official instructions etc., even if they occur at suppliers of the Seller or its subcontractors - shall not be within the responsibility of the Seller even in the case of agreed binding deadlines and dates. Such circumstances shall entitle the Seller to postpone the delivery or service by the duration of the impediment plus a reasonable start-up time or to cancel the contract completely or partially due to not yet fulfilled parts. If the impediment lasts for longer than 3 months, after setting an appropriate grace period, the Customer is entitled to cancel the contract with respect to the part of the contract not yet fulfilled.
3. If the delivery period is extended or if the Seller is released from its contractual obligations, the Customer cannot deduce any claims for damages thereof. The Seller can only refer to the abovementioned circumstances if it immediately notifies the Customer.
4. Where the Seller is answerable for non-observance of dates or deadlines agreed with binding effect or is in delay, the Customer may claim compensation for delay amounting to one half of one percent for every complete week of delay, not, however, exceeding 5% of the invoice value of the delayed deliveries and services. Any further claims are excluded, unless the delay is the result of at least gross negligence on the part of the Seller.
5. The Seller shall be entitled to make partial deliveries and render partial services at any time.
6. The Seller's observance of delivery and service obligations is subject to the Customer fulfilling its own obligations in a timely and orderly manner.
7. If the Customer is in default of acceptance, the Seller shall be entitled to demand compensation for the loss or damage which it suffers as a result; upon occurrence of default of acceptance, the risk of accidental deterioration or accidental loss shall pass to the Customer.

§5 – Transfer of Risk

The risk is transferred to the Customer as soon as the consignment is handed over to the shipper or has left the Seller's warehouse for shipment. If shipment is rendered impossible for reasons beyond the Seller's control, the risk will pass to the Customer upon notification that the goods are ready to dispatch.

§6 – Warranty

1. The warranty period is six months, starting from the date of delivery.
2. If operating and maintenance instructions of the Seller are not followed, changes are made to the products, parts are replaced or consumable materials are used which do not comply with the original specifications, any claims for defects in the products shall lapse unless the Customer refutes a reasonably substantiated claim that the defect was caused by one of these circumstances.
3. The Customer must inform the Seller's customer service management immediately in writing of defects, at the latest, however, within a week of receipt of the delivered item.
4. In the event of notification by the Customer that the products do not comply with the warranty, the Seller may demand at its own discretion and expense that:
 - a) the defective part and/or appliance is sent back to the Seller so that it can be repaired and returned afterwards;
 - b) the Customer keeps the defective part and/or appliance and a service technician of the Seller is sent to the Customer in order to carry out the repair;
5. If the Customer demands that the warranty work be performed at a location designated by it, then the Seller can meet this demand, whereby the parts under warranty are not charged, whereas working hours and travel expenses are to be paid to the Seller at the Seller's standard rates. If the rectification of defects fails after an appropriate period of time, the Customer can choose between demanding a reduction in payment and revoking the contract.
6. Liability for normal wear and tear is excluded.
7. Warranty claims against the Seller may only be raised by the direct customer and are not assignable.
8. The above paragraphs finally comprise the warranty clauses for the products and exclude any and all other warranty claims. This does not apply to claims for damages in connection with warranted qualities, which are meant to insure the Customer against the risk of consequential damage arising from defects.

§7 – Reservation of Title

1. Until all payment claims to which the Seller is entitled from the Customer for any legal reason now or in the future have been met (including all current account balance amounts), the Seller shall be granted the following security which the Seller shall release at its own discretion on demand insofar as the value of the security is permanently more than 20% above the value of the amounts payable.

2. The goods remain the property of the Seller. Processing or reshaping will always be performed for the Seller as manufacturer, but without any obligation on the part of the Seller. Where the (co-)ownership of the Seller expires through adjunction, it is now agreed in advance that the (co-)ownership of the Customer in the uniform object will be transferred proportionally (invoice value) to the Seller. The Customer shall keep the objects (co-)owned by Seller free of charge. Goods which the Seller (co-)owns will hereinafter be referred to as reserved goods.
3. The Customer shall be entitled to process and sell the reserved goods within ordinary course of business, provided that the Customer is not in default of payments. The reserved goods may not be pledged or title thereto transferred as security. The Customer herewith assigns all claims arising from the resale of the reserved goods (including all unsettled balances from current account) or on the basis of other legal grounds (insurance, unlawful acts) relating to the reserved goods as security. The Seller revocably authorizes the Customer to collect the claims assigned to the Seller for its own account and in its own name. This right to collect receivables can only be revoked where the Customer fails to comply properly with its payment obligations toward the Seller.
4. If a third party gains access to the reserved goods, particularly through attachments, the Customer agrees to point out the Seller's ownership and notify the Seller without delay so that the Seller can enforce its property rights. In the event that the third party is unable to indemnify Seller for costs incurred in connection with such proceedings in or out of court, the Customer shall bear liability for these.
5. If the Customer acts in violation of the contract - in particular default in payment - the Seller is entitled to take back the reserved goods or, if applicable, demand assignment of the Customer's claims for the return of the goods from third parties. Neither reclamation nor attachment of the reserved goods by the Seller shall be deemed to be a rescission of contract.

§8 – Payment

1. Unless otherwise agreed, the Seller's invoices shall be payable within 14 days of the invoice date with 2% discount or within 30 days of the invoice date without deduction. Despite any provisions of the Customer to the contrary, the Seller is entitled to initially offset payments against the Customer's older debts and shall inform the Customer of the type of set-off that has occurred. In the event that costs have been incurred and interest has accrued, the Seller is entitled to set the payment off against the costs and subsequently against the interests and against the main service.
2. A payment shall only be deemed to have been made once the Seller can dispose over the amount. In the case of payment by check, payment shall only be deemed to have been made once the check has been cashed.
3. If the Customer is in default, the Seller is entitled to demand interest from the date of default onward at a rate of 2% above the respective discount rate of the German Central Bank (Deutsche Bundesbank) as lump sum compensation. The interest rate used shall be lower if the Customer proves a lesser loss; the Seller is entitled to prove that the loss is greater.
4. If the Seller learns of conditions which cast doubt on the Customer's creditworthiness, especially if a check cannot be cashed or if the Customer discontinues his payments, or if the Seller learns of other conditions which cast doubt on the creditworthiness of the Customer, the Seller is entitled to declare the balance due immediately even if it accepted checks. In this case, the Seller shall also be entitled to demand advance payments or a security deposit.
5. Even where notice of defects is given or other counterclaims are asserted, the Customer shall have no right to set-off, retention or reduction unless the underlying counterclaims have been established as final and absolute or are undisputed. However, the Customer is also entitled to retain payment as a result of counterclaims arising from the same contractual relationship.

§9 – Construction Modifications

The Seller reserves the right to make construction modifications at any time; it shall, however, not be obliged to make such changes in products which have already been delivered.

§10 – Patents

1. The Seller indemnifies the Customer and the Customer's customers from all claims based on breach of intellectual property rights, trademarks or patents, except in cases where the Customer provides the concept of a delivered product. The Seller's indemnity obligation is limited according to the foreseeable damage. An additional precondition for such indemnification is that the conduct of litigation be left to the Seller and that the alleged infringement be exclusively attributable to the design of the Seller's delivered item and not to the combination or use with other products.
2. The Seller has the right, at its option, to relieve itself of the obligations assumed under paragraph 1 by either
 - a) obtaining the necessary licenses with respect to the patents allegedly infringed upon or
 - b) by providing the Customer with a modified delivery item or parts thereof which, in the event of exchange for the infringing article or its part, eliminates the accusation of infringement with respect to the article.

§11 – Confidentiality

Unless otherwise expressly agreed in writing, the information submitted to us in connection with orders shall not be considered to be confidential.

§12 – Limitation of Liability

Those claims for damages which result from the positive breach of an obligation, from culpa in contrahendo or from unlawful acts shall be excluded not only against the Seller but also against its vicarious agents, provided that the damage has not been caused intentionally or by gross negligence. This also applies to damage claims for non-performance, but only insofar as compensation for indirect or consequential damages is required, unless the liability is based on assurance to protect the Customer against such damage. All liability shall be limited to losses that were foreseeable at the time the agreement was concluded. In any case, the Seller's liability as set out in the German Product Liability Act (Produkthaftungsgesetz) and other claims on grounds of manufacturer's liability remain unaffected.

§13 – Applicable Law, Place of Jurisdiction, Partial Invalidity

1. These General Terms and Conditions and all legal relations between the Seller and the Customer shall be governed by the law of the Federal Republic of Germany.
2. Where the Customer is a merchant (Vollkaufmann) within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a separate estate under public law, Rottweil, Germany shall be the exclusive place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationship.
3. If an individual provision of these General Terms and Conditions is or becomes invalid, the remaining provisions and agreements shall remain unaffected thereby.