

I. GENERAL

1. All deliveries and services shall be based on these terms, as well as any separate contractual agreements. Sales terms of the ordering party that deviate from these terms shall not become terms of the contract as a result of the order being accepted. Neither shall the sales terms of the ordering party be recognised even if the supplier does not expressly contradict them after receipt. In the absence of any special agreement, a contract shall only be concluded when the supplier confirms the order in writing.
2. The supplier shall reserve property rights and copyrights to samples, quotations and similar information, whether in tangible or intangible form – including in electronic form; these may not be made accessible to third parties. The supplier undertakes only to grant third parties access to information and documents designated by the ordering party as confidential with the ordering party's consent.
3. All information provided by the supplier concerning the purchase item in the catalogue or during the contractual negotiations shall be regarded as descriptions of properties and not as warranties in the legal sense. Unless expressly agreed on or referred to in the purchase agreement, the supplier has not submitted any warranties.
4. Offers are made without engagement. Indications of delivery times are only approximate. The date of delivery shall refer to the date of dispatch ex works.
5. Data privacy notice: We expressly point out that we – exclusively for business purposes – will process and transmit the personal details of the ordering party's contact person with the aid of electronic data processing systems in accordance with the provisions of the German Federal Data Protection Act. In this context, specific data (name, address, invoice details and late payments by the customer) may be transmitted to credit agencies and credit insurance companies.

II. PRICE AND PAYMENT

1. Unless agreed otherwise, prices are quoted ex works including loading in the factory, but excluding packaging and unloading. Prices for the individual items of an offer shall only be valid if the entire order is placed based on this offer. Confirmed prices shall only apply when the agreed quantity is purchased. The prices do not include VAT, which will be charged separately at the legally applicable rate. If taxes or other external costs that are not included in the agreed price should change after conclusion of the contract, or if new costs and duties arise, the supplier shall be entitled to alter the prices by the relevant amount. The supplier will provide proof of this cost increase to the ordering party upon request.
2. In the absence of any special contractual provisions, payment is to be made into the supplier's account without any deductions immediately after receipt. Payment must be made in due time such that the amount is at the supplier's disposal on the due date. The costs of payment transactions shall be borne by the ordering party.
3. The ordering party may only withhold payments or offset them against counterclaims to the extent that such counterclaims are uncontested or have been legally established.
4. The ordering party shall be in default when a reminder is sent after the due date, but at the latest 30 days after the due date and receipt of an invoice or an equivalent demand for payment from the supplier. If the ordering party is in default, the supplier shall charge reminder fees and interest at the respective rates charged by banks for overdrafts starting from the due date, with a minimum rate of eight points above the central rate of the European Central Bank, unless the ordering party proves lower damages to the supplier. The supplier shall reserve the express right to claim further damages, particularly additional costs in connection with exchange rate variations and exchange hedging.
5. All claims of the supplier shall be due and payable immediately, regardless of the maturity date of any received and credited bills of exchange, if the terms of payment are not adhered to and if the supplier becomes aware of circumstances which, in its opinion, are capable of impairing the ordering party's creditworthiness. In such a case the supplier shall be entitled to effect still outstanding deliveries only against advance payment.
6. If the ordering party defaults on payments, the supplier shall further be entitled to withdraw from the contract and additionally to demand compensation. Furthermore, the supplier may prohibit the ordering party from selling on and installing goods supplied and may demand their return or the transfer of direct ownership of the goods supplied at the ordering party's expense. In such a case, the ordering party authorises the supplier to enter its premises and to remove the delivered goods; this removal shall not constitute withdrawal from the contract.
7. The ordering party can avoid the legal consequences set out in clauses 4 to 6 by providing security in the amount of the supplier's endangered payment claims.

III. DELIVERY PERIOD, DELAYS IN DELIVERY

1. The delivery period is deemed to be agreed as approximate. Its observance by the supplier is conditional upon all commercial and technical questions being resolved between the contractual parties and the ordering party having fulfilled all of its obligations such as procuring all of the necessary official certificates or approvals, or having paid a deposit. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if the supplier is responsible for the delay. If the ordering party subsequently alters the order, the supplier shall be entitled to extend the delivery period. The supplier shall be entitled to make a partial delivery.

2. Observance of the delivery period is conditional upon complete and punctual delivery to the supplier. The supplier will provide notice of possible delays as soon as possible.
3. The delivery period shall be deemed to have been observed if the delivery item has left the supplier's premises by the end of the delivery period, or if notification of readiness for dispatch has been given. If acceptance is required – except in the case of justified rejection – the acceptance date, alternatively, the notification of readiness for dispatch, shall be authoritative.
4. If the dispatch or acceptance of the delivery item is delayed for reasons for which the ordering party is responsible, the ordering party will be charged the costs resulting from the non-acceptance.
5. If the failure to observe the delivery period is due to force majeure, industrial disputes or other events that lie outside the supplier's sphere of influence, the delivery period shall be extended accordingly. The supplier will inform the ordering party of the start and end of such circumstances as soon as possible.
6. The ordering party can withdraw from the contract without setting a deadline if overall performance becomes impossible for the supplier before the transfer of risk. The ordering party can also withdraw from the contract if execution of part of the delivery becomes impossible and it has a legitimate interest in rejecting the partial delivery. If this is not the case, the ordering party must pay the contractual price due for the partial delivery. The same shall apply in the event of inability to perform. In all other cases section VII.2 shall apply. If the impossibility or inability to perform arises during the default of acceptance, or if the ordering party is solely or mainly responsible for these circumstances, it shall remain obligated to provide counter-performance.
7. If the supplier falls behind schedule, the ordering party must set an appropriate period of grace of 10 days. If the ordering party continues to suffer damage as a result of the delay after the end of the period of grace and it is able to prove this, the ordering party shall be entitled to demand compensation for this from the supplier unless the supplier declares itself willing to pay lump sum compensation for the delay to compensate this damage. The compensation for each full week of the delay shall amount to 0.5% – but no more than 5% in total – of the value of that part of the overall delivery that cannot be used on time or in accordance with the contract as a result of the delay. If – allowing for statutory exceptions – the ordering party sets the supplier an appropriate deadline for performance and if this deadline is not met, the ordering party shall be entitled to withdraw from the contract within the scope of the statutory provisions. Further claims resulting from delays in delivery shall be determined solely in accordance with section VII.2 of these terms and conditions.
8. If the ordering party cancels its order or refuses to accept the delivery item for reasons for which it is responsible, the supplier shall be entitled to demand cancellation costs amounting to twenty per cent of the order value without any further proof instead of its claim to contractual fulfilment and instead of damages. Alongside the cancellation costs, upon request by the supplier, the ordering party must reimburse the supplier for the equipment manufactured specially for the ordering party, which will be provided to the ordering party on request in this case.

IV. TRANSFER OF RISK, ACCEPTANCE

1. Unless agreed otherwise, the supplier shall determine the route and mode of dispatch, as well as the forwarding agent and the carrier. If the purchaser demands different transport (mode/route of dispatch) to that selected by seller, then the purchaser shall be liable for the additional costs incurred. This also includes lorries with lifting platforms, delivery with urban vehicles and time-sensitive deliveries. In the event of delivery by lorry, goods will not be unloaded and will be delivered to the place of unloading/curb (irrespective of the delivery conditions). The place of unloading must be accessible for all commercial lorries on roads that are passable in all weather conditions. Islands are excluded from all shipping/delivery conditions.
2. The risk shall transfer to the ordering party if the delivery item has left the supplier's premises, even if partial deliveries are made or if the supplier has undertaken to provide other services as well, such as the shipping costs or delivery and assembly. If acceptance is required, this shall be authoritative for the transfer of risk. It must take place immediately on the acceptance date, alternatively after notification of readiness for dispatch by the supplier. The ordering party may not refuse acceptance due to an insignificant defect.
3. If delivery or acceptance is delayed due to circumstances for which the supplier is not responsible, the risk shall be transferred to the ordering party on the day on which notification of readiness for dispatch or collection is given. The supplier undertakes to arrange the insurance required by the ordering party at the ordering party's expense.
4. If, through no fault of the supplier, transport via the proposed route or to the proposed place at the proposed time becomes impossible, the supplier shall be entitled to deliver via

another route or to another place; the ordering party shall be liable for the additional costs incurred. The ordering party will be given the opportunity to make a statement in advance.

5. Partial deliveries are permissible, provided that these are reasonable for the ordering party. Excess deliveries and the short deliveries that are standard in the trade shall be permitted.
6. If the goods are damaged during transit, the ordering party will immediately arrange for a factual report to be prepared by the relevant bodies.
7. The delivered items must be accepted by the ordering party even if they show signs of insignificant defects, irrespective of the ordering party's rights under section VI. of these terms and conditions.
8. The goods will be delivered unpacked and not protected against rust. If and insofar as this is customary in the trade, the supplier will deliver the goods in a packed condition. The supplier will arrange for packaging, protection and/or transport aids based on its own experience and at the expense of the purchaser. In accordance with the German Packaging Ordinance, the supplier will not take back transport packaging and all other packaging.

V. RETENTION OF TITLE

1. The supplier shall retain ownership of the delivery item until all payments due under the delivery contract have been received.
2. The supplier shall be entitled to insure the delivery item at the ordering party's expense against theft, breakage, fire, water and other damage, unless the ordering party shows that it has already taken out such insurance.
3. The ordering party may neither sell, pledge nor assign the delivery item by way of security. In the event of seizure, confiscation or other third party disposition, it must inform the supplier of this immediately.
4. If the ordering party acts in a way contrary to the contractual obligations, the supplier shall be entitled to take back the delivery item after giving notice and the ordering party shall be obliged to release the goods.
5. Due to the retention of title, the supplier may demand surrender of the delivery item only if it has withdrawn from the contract.
6. The ordering party is obliged to inform the supplier immediately of all compulsory enforcement measures against a delivery item subject to the retention of title and to send the supplier copies of the garnishee orders and bailiffs' returns. Furthermore, it must take all measures to prevent the compulsory enforcement from taking place.
7. The application to institute insolvency proceedings in respect of the ordering party's assets shall entitle the supplier to withdraw from the contract and to demand that the delivery item be returned immediately.
8. Where the reserved goods are processed, combined or mixed with other goods by the ordering party, the supplier shall have a share in the ensuing joint property of the new goods in proportion to the invoice value of the reserved goods to the other goods, or in the absence of this, to the cost of production. If the supplier's ownership lapses due to the combining or mixing, the ordering party shall transfer to the supplier upon conclusion of the contract the ownership rights to the new product or the goods to which it is entitled to the extent of the invoice value of the reserved goods and shall safeguard these for the supplier free of charge. The co-ownership rights arising in this context shall be deemed reserved goods for the purposes of section V.1.
9. The ordering party may only sell the reserved goods in the normal course of business, subject to its normal terms and conditions and as long as it is not in arrears, provided that it agrees to a retention of title with its purchaser and that the claims arising from the onward sale are transferred to the supplier in accordance with sections V.10. to V.12. It shall not be entitled to dispose of the reserved goods in any other way.
10. The ordering party's claims arising from the onward sale will be transferred to the supplier upon conclusion of this contract. The supplier hereby accepts the assignment.
11. If the ordering party sells the reserved goods together with other goods not acquired by the supplier, then the assignment of the claim from the onward sale shall only apply to the amount of the invoice value of the respective reserved goods sold. Where goods are sold in which the supplier has a share in the joint property pursuant to section V.8, the claim shall be assigned in the amount of this co-ownership share.

→ INFORMATION

GENERAL DELIVERY AND PAYMENT TERMS

Tecanno GmbH, 2014



12. If the ordering party uses the reserved goods to fulfil a service contract, sections V.10 and V.11 shall apply accordingly to the claim arising from this contract.

13. The ordering party shall be entitled to enforce claims from the sale in accordance with sections V.9 to V.12 until revocation, to which the supplier is entitled to at any time. The supplier will only make use of the right of revocation in the cases listed in section II.4.

14. The ordering party shall not be entitled to assign the claims under any circumstances. At the request of the supplier, it is obliged to inform its purchaser of the assignment to the supplier immediately and to provide the purchaser with the information and documents required for enforcement.

15. If the value of the securities granted to the supplier exceeds the secured claims by more than 25% in total, then the supplier shall only be obliged to release securities at the request of the ordering party at its discretion.

16. If the retention of title or the assignment is not effective under the law in the area where the goods are located, then the security corresponding to the retention of title or the assignment in this area shall be deemed to have been agreed to. If the ordering party's cooperation is required for this, it must take all measures required to create and preserve such rights at its own expense.

VI. CLAIMS FOR DEFECTS

For material defects and defects in title in respect of the delivery, the supplier shall warrant to the exclusion of further claims – subject to section VII – as follows:

Material defects

1. All those parts which prove to be defective as a result of circumstances existing prior to the passing of risk are to be repaired or replaced free of charge at the supplier's choice. Such defects must be reported to the supplier in writing as soon as they are discovered. The old parts to be replaced will become the supplier's property.

2. So that all repairs and replacement deliveries that the supplier considers necessary can be carried out, the ordering party will give the supplier the time and opportunity for this in agreement with the supplier; otherwise the supplier is exempt from liability for the resulting consequences. Only in urgent cases where operational reliability is endangered or to prevent disproportionately large damage, in which case the supplier must be informed immediately, shall the ordering party have the right to repair the defect itself or to appoint a third party to do so and to demand compensation for the necessary expenditure from the supplier.

3. Of the direct costs resulting from the repair or replacement delivery, the supplier shall bear – provided that the complaint transpires to be justified – the costs of the replacement part including shipping.

4. In accordance with statutory regulations, the ordering party shall have a right to withdraw from the contract if the supplier – taking account of the statutory exceptions – fails to meet a reasonable deadline set for the improvement or replacement delivery on grounds of a material defect. If only an insignificant defect is present, the ordering party shall merely be entitled to reduce the contractual price. The right to reduce the contractual price shall otherwise be excluded. Further claims shall be determined solely in accordance with section VII.2 of these terms and conditions.

5. In particular, no warranty will be assumed in the following cases: Unsuitable or improper use, incorrect assembly or operation by the ordering party or by a third party, natural wear and tear, incorrect or negligent treatment, improper or insufficient maintenance, unsuitable operating resources, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influence – unless the supplier is responsible for this.

6. If the ordering party or a third party makes improper repairs, the supplier shall not be liable for the resulting consequences. The same shall apply for alterations to the delivery item made without the prior written authorisation of the supplier.

Defects in title

7. If use of the delivery item causes infringement of industrial property rights or copyrights in the Federal Republic of Germany, the supplier will, as a basic principle and at its own expense, procure the right for the ordering party to continue to use the delivery item, or will modify the delivery item in a way which is reasonable for the ordering party, such that the infringement of the industrial property right no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period, the ordering party shall be entitled to withdraw from the contract. In the circumstances cited above, the supplier shall also be entitled to withdraw from the contract. Furthermore, the supplier will release the ordering party from uncontested claims or claims confirmed by a declaratory judgment which are brought by the owner of the industrial property right.

8. The obligations listed in section VI.7 are exhaustive with regard to the infringement of intellectual property rights or copyrights subject to section VII.2. They shall only exist if

- the ordering party informs the supplier of asserted intellectual property right or copyright

infringements without delay,

- the ordering party assists the supplier to a reasonable extent in the defence of such claims raised, or enables it to carry out the modifications in accordance with section VI.7,
- all defence measures including out-of-court settlements remain open to the supplier,
- the defect in title is not based on an instruction given by the ordering party and
- the infringement of the right was not caused by the ordering party making unauthorised changes to the delivery item or using it in a manner not agreed to in the contract.

VII. LIABILITY

1. If, through fault of the supplier as a result of suggestions and advice given before or after the conclusion of the contract being ignored or executed incorrectly, or through the violation of other contractual ancillary obligations – in particular instructions for operating and maintaining the delivery item – the delivery item cannot be used by the ordering party in accordance with the contract, then the provisions of sections VI. and VII.2 shall apply accordingly to the exclusion of further claims of the ordering party.

2. For damage that has not occurred to the delivery item itself, the supplier – irrespective of the legal grounds – shall only be liable

- a. in cases of intent,
- b. in cases of gross negligence on the part of the owner/committees or company executives,
- c. in the event of wrongful harm to life, body, or health,
- d. in the event of defects which the supplier has concealed by malicious act or whose absence is guaranteed,
- e. in the event of defects to the delivery item where liability is prescribed under the Product Liability Act for people or material damage to privately used items. In the event of the culpable violation of substantial contractual obligations, the supplier shall also be liable in the event of gross negligence on the part of employees who are not directors and in the event of slight negligence, limited in the latter case to the reasonably foreseeable damage that is typical of the contract. Further claims are excluded.

VIII. LIMITATION PERIODS

For defects to buildings or for delivery items which, in accordance with their customary use, were used for a building and which caused the building's defectiveness, claims shall become time-barred after the statutory limitation period of 5 years.

By way of derogation from this, a limitation period of 2 years shall apply for electrical or pneumatic drives and control systems, as well as for wear parts. The statutory periods shall apply for damage claims pursuant to section VII.2 a – e. All other claims brought by the ordering party – irrespective of the legal grounds – shall become time-barred after 2 years.

IX. WITHDRAWAL FROM THE CONTRACT AND RETURN OF GOODS

1. A withdrawal from the contract that is not legally or contractually authorised shall require our express written consent to become effective.

2. If we consent to the withdrawal – subject to any other arrangement – goods that are in their original packaging, are not older than one year, and are in perfect condition will be taken back. The ordering party will be issued with a credit note on the basis of the invoice amount less postage and packaging and less a lump-sum fee for handling, technical inspection and repackaging amounting to twenty per cent of the order value. This amount may be increased if the goods are damaged. Custom-made products in accordance with customer specifications are excluded from being returned.

X. APPLICABLE LAW, PLACE OF JURISDICTION

1. All legal relationships between the supplier and the ordering party shall be governed solely by the applicable law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

2. Unless agreed otherwise, the place of fulfilment shall be the supplier's plant. The place of jurisdiction for all legal disputes arising from the contractual relationship is Paderborn. The supplier shall, however, be entitled to bring claims at the place of the ordering party's headquarters.