

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY



I. General information

1. Validity of these terms and conditions

The deliveries, services and corresponding offers of the supplier (NESS) are made on the basis of these terms and conditions. They also apply to all future business relationships, even if they are not expressly agreed again. These terms and conditions are deemed accepted at the latest upon receipt of the goods or services. Acceptance with reference to the customer's general terms and conditions and/or terms of purchase is hereby objected to and rejected.

2. Offers

Offers are prepared and submitted without obligation in all respects. All offers are non-binding. The supplier reserves ownership rights and copyrights to all offer documents, price lists and drawings; the documents, lists and drawings may not be disclosed or communicated to third parties.

3. Conclusion of contract, additional agreements, changes, deviations

Orders are considered accepted only if they have been confirmed by us in writing or by telex (order confirmation).

Additional agreements and changes always require our written confirmation; this also applies to the revocation of this rule.

Illustrations and drawings as well as information on dimensions, weights, performance data and operating instructions are only binding if expressly agreed in writing. Otherwise, in particular recourse claims due to deviations are excluded.

4. Prices

Our prices are non-binding and are ex works excluding packaging. Value-added tax is added to the prices at the applicable statutory rate.

II. Delivery

1. Delivery and service dates

Observance of the delivery term is only applicable if the customer fulfils his contractual obligations.

Unavoidable events due to force majeure such as environmental damage, strikes, lockouts, unstable political circumstances (*force majeure*) do not entitle the customer to compensation. An adaptation of the contract (here: delivery responsibility) in agreement is to be aimed at. As far as this is not economically feasible for the supplier, the supplier is entitled to rescind partially or fully from the contract.

The delivery is **conditional upon self-supply**.

Should the customer suffer any loss on account of a delay which can be proven to be the supplier's fault, he is entitled, to the exclusion of any other claims due to delay, to require compensation for the delay for each full week of the delay amounting to 0.5 % of the value of those parts of the total delivery that cannot be used on time or in compliance with the contract as a result of the delay, subject always to a maximum of 5 %.

There will be no transactions for delivery by a fixed date.

2. Shipping

Shipping is always at the expense and risk of the customer. Partial deliveries are permitted. The risk is passed on to the customer as soon as the shipment has left our factory, including in the case of exceptionally agreed, carriage-paid delivery, installation, assembly, commissioning or other general services on site in connection with the delivery. From that point on the customer bears the burden of proof. If shipping is delayed without fault on our part, notice of readiness for dispatch is sufficient for the passage of risk.

III. Assembly

If expressly agreed, assembly covers the operation-ready installation of the supplied plants. All excavation, masonry and installation works, as well as the provision of scaffolding and lifting equipment (crane, forklift, etc.) is at the expense of the customer and must be completed before installation commences so that the assembly can be started immediately after delivery and carried out without interruption. Before the start of assembly, the customer must ensure that regulatory obstacles (prohibitions, conditions of changes, etc.) do not prevent the assembly from being carried out.

IV. Payment

The conditions specified in our order confirmation are decisive for payments.

1. Unless special arrangements have been made, payment must be made net within 30 days of the invoice date. Assembly invoices are to be paid net immediately after receipt of the invoice.

2. Neither discounts nor interest subsidies are granted for payments by means of bill of exchange or advance payments. Deducing a discount is only permitted with special written agreement. Bills of exchange are only accepted by agreement and on condition that they are discountable. Acceptances, bills of exchange, checks and the like are not considered performance of fulfilment.

3. If payment terms are exceeded, default interest for the period of default in the amount of 5 % (for registered traders, 8 %) above the respective base interest rate of the European Central Bank are charged, subject to the assertion of other rights.

4. Payments are to be processed exclusively with the means of payment permitted in Germany. Offsetting counterclaims of the customer against demands for payment of the supplier is only permitted if these have been acknowledged by the supplier and/or legally established. The same applies to the assertion of any right of retention.

V. Retention of title

The supplier retains ownership of all delivery items until the fulfilment of all claims arising from the business relationship (including all demands for payment of balance from current accounts) the supplier is entitled to against the customer for any legal reason now or in the future. As far as the value of the reserved property sustainably and permanently exceeds the amount of the claims to be secured in this respect by more than 20 %, the supplier will at his discretion and upon request of the customer release the property reserved for him.

The goods remain the property of the supplier. Processing or transformation always takes place for the supplier, but without obligation for him.

If the (co-)property of the supplier lapses due to consolidation, it is already agreed that the (co-)ownership of the customer in the integrated object passes to the supplier ad valorem (invoice value). The customer stores the (co-)property of the supplier free of charge. Goods to which the supplier is entitled (co-)ownership are hereinafter referred to as reserved goods.

The customer is entitled to process and sell the reserved goods in the ordinary course of business, as long as he is not in default. Pledging of the goods or transferring ownership by way of security is not permitted. For the sake of security, the customer already now fully transfers any claims (including all claims for debts from the current account) in respect of the reserved goods arising from their further sale or from any other legal ground (insurance, unauthorised action) to the supplier. The supplier revocably authorises the customer to collect the claims he has transferred to the supplier for the supplier's account in his own name. The authorisation for collection can only

be revoked if the customer does not meet his payment obligations under the contract (default). The supplier will announce the revocation.

In case a third party should access reserved goods (distraintment, etc.), the customer will indicate the ownership of the supplier and inform the latter without delay, so that the supplier can assert his ownership rights.

Inasmuch as the third party is not able to repay the court costs and/or out-of-court costs arising in this connection to the supplier, the customer is liable for these costs.

In the event of any breach of contract on the part of the customer – in particular delay of payment – the supplier is entitled to repossess the reserved goods or, if appropriate, to demand assignment of the customer's claim for return against third parties. Neither the claiming back of the reserved products nor their distraintment translates into a termination of the contract.

VI. Warranty and removal of defects

1. The supplier warrants for the quality of his products at his expense and at his discretion either by repair or by supply of spare parts for a period of 12 months from the passage of risk with the proviso that defects in these products are reported to him immediately after detection in writing within this period and are demonstrably due to defects in construction, poor building materials or poor execution. Electrical circuit parts are excluded from the warranty as far as their failure is not due to a fault of the supplier.

2. If the subsequent improvement or subsequent delivery fails, even after a reasonable deadline set by the contract, the customer can demand at his discretion reduction of the remuneration or rescission of the contract. Further claims are excluded subject to the cases of properties expressly assured in accordance with item I.3. of these terms and conditions.

3. Any changes or repairs carried out improperly by the customer or third parties without the prior consent of the supplier cancel the liability for the resulting consequences; the same applies to damage caused by the following reasons: Unsuitable or improper use, incorrect installation and/or commissioning by the customer or a third party; natural wear and tear; faulty or negligent operation; unsuitable operating materials; replacement materials; faulty construction work; unsuitable foundation; chemical, electrochemical or electrical factors, inasmuch as these are not the fault of the supplier.

4. Warranty work does not affect the statute of limitation (in particular no extension).

VII. Supplier's right to withdraw

False information from the customer about his creditworthiness entitle the supplier to withdraw from the contract or to demand advance payment. The same applies if objectively a creditworthiness is not fulfilled and thereby the claim for remuneration of the supplier is or becomes put at risk. Unsuccessful attempts at enforcement then entitle the supplier to withdraw if the claim for payment by the supplier appears to be considerably at risk.

VIII. Limitation of Liability

Any liability of the supplier is limited to own gross negligence, gross negligence on the part of his executives, and gross negligence on the part of vicarious agents, insofar as the latter have violated essential contractual obligations.

1. If the delivery item cannot be used by the customer under the terms of the contract as a result of failure of the supplier due to omission or incorrect execution of proposals and consultations before or after conclusion of the contract or breaches of other contractual accessory obligations, in particular instructions for operation and maintenance of the delivery item, then the regulations in item VI and item VIII.2 apply accordingly to the exclusion of further claims of the customer.

2. The supplier is liable – on whatever legal grounds whatsoever – for damages not caused to the item itself only

- in case of intent, or
- in case of gross negligence, or
- in case of culpable injury to life, body and health, or
- in case of defects of the delivery item to the extent that liability exists according to the Product Liability Act for personal injuries and material damage to privately used items.

In the case of culpable violation of essential contractual obligations, the supplier is also liable in case of simple negligence, in the latter case limited to the contractually typical, reasonably foreseeable damage. This limitation of liability does not apply to injury to life, limb or health.

Further claims are excluded.

IX. Applicable law, place of fulfilment and jurisdiction

This contractual relationship is subject to the law of the Federal Republic of Germany.

The place of fulfilment is the place of business of the seller / contractor for both parties, unless the fulfilment for the seller / contractor has been expressly agreed by delivery to the customer's residential or business area or otherwise.

If the customer is a merchant, the exclusive place of jurisdiction is the place of business of the seller and/or contractor (Remshalden near Stuttgart).

If the customer is not a merchant, the parties agree that the place of jurisdiction is Remshalden near Stuttgart in the event that the party to be sued relocates abroad or the place of residence resp. place of business is unknown.

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