

General Terms and Conditions

Work and Purchase Contract

I. Scope

1. The following terms and conditions are part of all offers and of all contract acceptance declarations made by the contractor and are basis for all sales and deliveries by the contractor including consulting services and information. They will become valid as of placing of the order by the customer as accepted part of the contract.
2. Adverse general terms and conditions of the customer are contradicted to their full extent; they only will become part of the contract with the contractor's written confirmation and that only once to the extent of the confirmation deviating from the GTC on hand.
3. In case of supplementary or follow-up orders of the type listed under I.1 these general terms and conditions will apply correspondingly. They will be applicable at the latest at the time as of placing of the order by the customer as accepted part of the contract.
4. Inasmuch as deliveries of products of hardware and software are object of the contract, the relevant conditions of the contractor will apply additionally in their correspondingly valid version.

II. Subject Matter of the Contract

1. Pre-contractual information, in particular offers, descriptions and cost estimates are considered as subject to change except if explicitly agreed upon otherwise. Information, details given in leaflets, data sheets and indications made with regard to technical applications shall be considered as information only and shall supply general knowledge. If not agreed upon otherwise, they will not become part of the contract. Only the contractor's written order confirmation will be applicable with regard to the subject matters and scope of the contract. Contract amendments and oral additional agreements will become effective only after written confirmation. If the contract is part of the business of a mercantile trade of a merchant, the contractor's written order confirmation will be applicable with regard to the subject matters and scope of the contract.
2. The contractor reserves himself the right to make technical amendments during the execution of the order if they are the result from the progress of technical development or if in the individual case they turn out to be relevant in the interest of the performance capability of the installation. A reference deviating from or supplementary to the contract made by the customer regarding "customary habit in this sector" is herewith contradicted explicitly.

III. Prices

1. The prices quoted by the contractor are understood without legal added value tax, if the added value tax has not been explicitly indicated; for the purchase order the prices are understood ex works or ex stock, respectively; packing and installation will not be included in the price, except agreed upon otherwise. Should the added value tax be increased after contract conclusion, the contractor is entitled to increase it to the same extent.
2. If a price agreement binding for the contractor has been achieved, he can nevertheless amend the prices in case the performance of the contractor shall be carried out more than four months after contract conclusion if subsequently the delivery or performances are directly or indirectly involved and become more expensive by newly added public charges, additional expenses, freight costs or the increase thereof or other legal actions or a change of cost factors such as labour costs and material costs on which the contractor's prices are based. If owing to the stated circumstances the price exceeds the price agreed upon by more than 10%, the customer is entitled to withdraw from the contract or terminate it, respectively. This will not apply if the contractor has explicitly and in writing confirmed a fixed price.

IV. Delivery Times, Delivery and Transfer of Perils

1. The execution and delivery respectively will start at the latest within approximately six weeks after contract conclusion unless the contractor has declared them as being binding explicitly and in writing. The execution and delivery time, respectively will start at the day of receipt of the customer's unconditional order confirmation at the contractor, however, not prior to the clarification of all details for the execution and fulfilment of other preconditions to be provided by the customer.

2. In case of force majeure and other unforeseeable, extraordinary circumstances beyond the contractor's control, for example difficulties in procuring material, interruptions of operation, strike, lockout, lack of transportation means, governmental interventions, difficulties in energy supplies etc. – even if they occur with pre-suppliers – the execution and delivery time will extend to the duration of the obstruction as well as an appropriate lead time if the contractor is prevented from punctually meeting his obligations. If the delivery or the performances are rendered impossible due to the stated circumstances or the contractor is entitled to a right of refusal to carry out the performances owing to personal or practical unreasonableness, respectively, the contractor will be relieved from his obligation to execute the work and will be disengaged from his contractual obligations, respectively. In case the delay in the execution is lasting for more than two weeks, the customer will be entitled to withdraw from the contract. If the execution and delivery time, respectively is extended or if the contractor is relieved from his obligation of execution and performance, the customer cannot derive any claims for damages thereof. The contractor may relate to the stated circumstances only if he informs the customer immediately. The customer's right to cancel the contract after fruitless expiry of appropriate days of grace remains unaffected.

3. The contractor is entitled to carry out independent useable partial performances for the customer.

4. In case of a contract for work and services is concerned, the perils are being transferred to the customer after the installation has been commissioned by the contractor at the latest, however, after acceptance. This will also apply to partial acceptances, in case such can be made owing to type and nature of the work. If no acceptance is required by the customer, the performance will be deemed to have been accepted after 12 working days have expired and following written notification that the performance has been completed. Aforementioned regulations will also apply to partial acceptances. The acceptance cannot be refused or delayed because of minor deficiencies.

5. The contractor's branch office will be the place of fulfilment when a purchase order has been concluded. The customer will bear the costs for the shipment of the purchase object ex domicile of the branch office of the contractor. If no agreements have been made regarding the shipment, this will be made at the contractor's discretion, except that he is not obliged to choose the most economic mode of transportation.

If the customer is an entrepreneur, the perils of destruction or damage of the goods will also be transferred to him as soon as the goods have left the works or the stock or even though delivery free of charge has been agreed upon. Upon the customer's request, the goods will be insured at his expense against damages of break, transportation and fire.

6. If upon the customer's request or for reasons within his responsibility (creditor's delay) the performances or delivery will be delayed, the perils are transferred to the customer for the time of the delay. The corresponding costs for waiting time, allocation and storage and further necessary journeys of the contractor's vicarious agents are to be borne by the customer.

V. Erection and Maintenance of Installations

For any type of erection, installation and maintenance the following regulations will apply if not agreed upon otherwise in writing:

A. The customer has to assume and to punctually provide for the following at his own expense:

An assistant team such as sub-workers and, if required, brick layers, carpenters, metal-workers, crane operators, other expert workers including all tools required in necessary quantities, all ground, bedding, mortising, scaffolding, plastering, painting or other extra work outside the contractor's field of business including the required building materials, power supply and water including the necessary connections up to the point of use, heating and general lighting, at the place of installation for the storage of machine parts, devices, materials, tools etc. sufficiently large, appropriate dry and lockable rooms and for the installation personnel appropriate work and recreation premises including all sanitary facilities; in addition, the customer has to take all measures at site to protect the contractor and the property of the contractor's installation personnel which he would take for the protection of his own property including protective clothing, and protective facilities which are required because of special circumstances at the installation site and which are out of the contractor's field of business.

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2. 5 days prior to the start of the installation works the customer has to make available without being requested the necessary details about the position of sub-surface mounted power supply lines, gas or water-pipes or similar installations as well as the necessary static details.

3. The customer is obliged to confirm daily or weekly according to the contractor's choice to the erector and his installation personnel the work performed. Furthermore, he confirms the completion of the erection or installation on forms provided by the contractor.

4. The customer will bear the costs for the correct disposal according to the regulations for the environmental protection of built-in parts and components which must be dismantled or replaced.

B. If the contractor has assumed the installation or maintenance against individual billing, the following conditions in addition to such under A. are considered as agreed upon:

1. The customer will pay to the contractor the cost rates agreed upon at the placing of the order for labour time and additional fees, for overtime, night-, Sunday and public holiday work, for work under hindered circumstances as well as for planning, supervision and documentation. This applies accordingly to the material consumption including cut-offs as well as to the erection and the connection of the installation.

2. Lead times, travelling times and walking times as well as feedbacks are considered as labour time and driving to and from the job which includes in particular labour- and vehicle costs will be charged according to the actual expense involved.

3. Furthermore, the following costs will be paid separately:
Travelling costs, costs for transportation of tools and personal baggage, for freight and packing, for the delivery of all materials and devices including ordered technical documents; at the contractor the usual expense allowances and extra pay for labour time and for days of rest and public holidays as well.
C. For diagnosis and removal of temporarily occurring (intermittent) faults, repeated checks and work services may become necessary. The customer has to equally bear the costs insofar as repeated work assignments of the contractor will become necessary.

VI. Payment

1. Our invoices will become due 5 days as of date of invoice.
2. In case the customer gets into delay, interests according to § 288 BGB will be charged subject to a further damage is claimed.
3. Payments must be made with debt-discharging effect exclusively to the contractor himself.
4. Instalments become due as follows: 30% at placing of the order, 30% at the start of installation and 30% when the installation is handed over. In case the instalments are not effected punctually, the contractor is entitled to cease his further activity or to postpone it until payment has been made, respectively.
5. The acceptance of cheques, drafts and other securities is made only on account of performance under the usual reserve of their redemption, their possibility of discounting and the customer will assume all costs which may arise in connection with their redemption. Discount and note charges are at the customer's expense and will become due immediately.
6. For partial deliveries the contractor is on demand entitled to corresponding partial payments.
7. Independent from the maturity of possibly accepted and credited drafts, all receivables of the contractor become due immediately if the terms of payment are not complied with or the contractor gets to know circumstances which are suited to reduce the creditability of the customer.
8. If the customer withdraws from the contract (order cancellation) without a reason for this has been given by the contractor or if the customer declares his withdrawal from the contract or cancels the contract, for reasons for which the customer is responsible, the customer is bound to reimburse the costs already incurred as well as the loss of profit by a lump sum of max. 30% of the wages agreed upon. The customer is liable to prove that costs and profit have not incurred or have not incurred in this amount or there has not been a loss, respectively. Thereupon, the charging will be made only up to the proven amount.
9. The customer is entitled to offsetting only if the counter claim is beyond dispute and has been stated as legally binding.

VII. Reservation of Propriety Rights

All goods remain the contractor's propriety (goods under reservation) until all claims have been fulfilled which existed at the time of contract conclusion – for payment by cheque or draft until redemption- no matter for which legal reason and even then, if specifically denominated claims have already been paid.

If the contract is part of the business of a mercantile trade of a merchant, paragraph 1 will also apply for future or conditional claims also from contracts concluded simultaneously or at a later time.

Regarding the goods under reservation, the customer is bound to omit any interference with the property and in case of an access by a third party to inform the contractor immediately. If costs have arisen in this respect for interventions, they are to be borne by the customer.

If the value of the securities exceeds the contractor's claim by more than 20%, he will on demand of the customer release securities in this respect according to his choice.

VIII. Claims and Rights because of Deficiencies

1. If the object of the contract has deficiencies, the customer is entitled to claim firstly subsequent fulfilment (rework or replacement delivery) within an appropriate period of grace, whereby the contractor has the option of rework or replacement delivery. In case of rework the contractor is entitled to two attempts.

2. For delayed, refused or severally failed rectifications the right to withdraw from the contract (cancellation of the contract) or reduction (decrease of remuneration) remains unaffected. If the customer is an entrepreneur, there will not be any rights to claim damages for defects if only insignificant deviations of the quality or insignificant detriments of use of the object of the contract are concerned. In case construction work is subject of liability of defects, a withdrawal from the contract is excluded.

a) If a purchase contract is involved, the period of limitation for subsequent fulfilment, withdrawal or reduction for new things is two years, for used things one year. The time limit starts with the delivery of the object of purchase. If the customer is an entrepreneur, the period of limitation is one year for new things; subsequent fulfilment, withdrawal and reduction are excluded for used things.

b) If a contract for work and services is concerned, the period of limitation for subsequent fulfilment, withdrawal and reduction is one year. The time limit starts with the acceptance of the installation or in the absence of an acceptance with the commissioning of the installation.

c) These periods of limitation will apply only if attempts of repair, maintenance or technical amendments have not taken place at the object of the contract, neither by the customer nor by third parties, the customer is behaving in accordance with the contract, the object of the contract has been operated, maintained and used correctly and obvious deficiencies have been indicated in writing to the contractor within two weeks as of transfer of perils, undistinguishable deficiencies at discovery at the latest, however, within the periods of limitation have been indicated to the contractor in writing.

d) In the case of the existence of deficiencies, the customer is entitled to the right of retention if this is in an appropriate relation to the deficiencies and the probable costs of subsequent fulfilment (in particular removal of defects).

3. The contractor draws attention to the fact that an implementation of software absolutely free of faults, especially in case of complex software systems according to the today's state of the art is technically not feasible respectively not at reasonable costs.

Object of this liability for defects is a program which is suitable according to the program description for the assumed use according to the contract.

a) The contractor warrants that the program carrier is free of any material and production defects when it is handed over to the customer.

b) It is to be observed that, a software while it is in use is subjected to continuous improvement efforts and for this reason an update has to be possibly made at certain intervals. This is no deficiency but a system immanent feature of the software.

If programs are used for customer-owned hardware, the liability for defects extends only to the software supplied, but not to the interaction with the hard- and software provided by the customer.

4. For the removal of defects, the customer has to grant at his reasonable discretion the necessary time and opportunity.

5. The liability for defects does not apply to natural wear and tear, furthermore it does not include damages which came into existence because of faulty or negligent treatment, excessive stress, weather influences, force majeure, unsuitable operating means, poor construction work, unsuitable building ground and such chemical, physical, electromagnetic or electric influences which are not subjected to the contract.

6. Any changes of use intended by the customer are to be indicated to the contractor and must be agreed upon with him. If the customer omits to make such indication or agreement, he will lose any liability claim for defects.

7. The contractor will not assume any liability for defects for products/performances provided by the customer.

IX. Liability

1. The contractor is liable only for intent and gross negligence; he excludes his liability for a slightly negligent violation of duty, unless damages for injuries of life, body and health and warranties are concerned. Furthermore, the liability for the violation of duties remains unaffected the fulfilment of which is of special importance to achieve the purpose of the contract (fundamental contractual obligation) and on the observation of which the customer can regularly trust. The same applies to violation of duties by the contractor's vicarious agents and representatives.

2. A liability exceeding this will not be assumed, in particular no liability will be assumed for damages which may occur as a consequence of criminal acts (for example robbery, theft, burglary) towards persons, property or assets of the customer or third parties. In any case claims for compensation of consequential damages are excluded for example non-function of the system, burglary, costs for police and fire brigades, respectively as well as possibly security companies in case danger alarm systems are concerned unless mandatory legal regulations for a liability in case of intent and gross negligence are opposed to these liability restrictions.

3. The contractor is not liable for work carried out by his vicarious agents unless the work is connected with the agreed upon deliveries and services or unless such work has been directly ordered by the customer.

4. The contractor must be promptly informed in writing about any irregularities having occurred in the execution of his contractual obligations in order to remove them. Otherwise no rights can be derived from this.

5. Advice given by the contractor's personnel or by representatives appointed by him is not binding and is not part of the contract. It is based on the contractor's present state of knowledge and experience and is given to the best of their knowledge. Liabilities claims are excluded to the extent that intent and gross negligence respectively cannot be evidenced against the contractor.

X. Applicable Law, Place of Fulfilment and Place of Jurisdiction

1. For the legal relationship between the contractor and the customer the Law of the Federal Republic of Germany will apply.

2. If the contract is part of the business of a mercantile trade of a merchant, the domicile of the contractor will be the exclusive place of fulfilment and place of jurisdiction.

XI. Data Storage

The contractor is entitled to process and store data about the customer received in connection with the business relation in the sense of the Federal Data Protection Act as far as this is deemed appropriate in the scope of the execution of the contract.

XII. Miscellaneous

1. The offers and the planning documents of the contractor is material protected by copyright and without his written permission it may be neither copied nor transferred. In case of offence, the customer will be held responsible for indemnification.

The contractor's programs made available to the customer for use is material protected by copyright. The customer commits himself to use it only for himself and only in the scope of his commercial activity.

By accepting the programs he commits himself to neither copy them nor have them copied without the contractor's consent nor to make any copies of the program descriptions, nor to have them copied, nor to make the programs or copies thereof available to unauthorized third parties at any time. In case of offence, the customer will be held responsible for indemnification.

2. For transmissions via the public telephone network or other transmission media, the contractor does not offer a higher safety for the connection and the transmission of messages than the own safety of this transmission service.

3. Any fees which are claimed by the network provider, police, fire brigade or third parties owing to the agreed upon deliveries and performance will be at the customer's expense.

4. The contractor is entitled to use other reliable enterprises in fulfilment of his obligations.

5. The contractor is not bound to procure replacement parts if this is connected only with an inappropriate economic expense or procuring them is, indeed, impossible.

6. If one of the afore-mentioned regulations becomes ineffective, the validity of the other regulations is not affected. In case of legal ineffectiveness of a clause, the customer is bound to stipulate a new regulation with the contractor, which comes as close as possible to the intended purpose with regard to the ineffective clause.