



Sales and Delivery Terms

(as per June 21, 2010)

The present GBTs only apply in relation to entrepreneurs as defined by § 14 BGB.

I. Offer and Conclusion

- The following Sales and Delivery Terms will apply to all our contracts, goods and services, including consulting services, information, etc. Business and order terms by the client will only be effective if we acknowledge them in writing. Our good or service will be regarded as having been accepted by the latest upon collection.
- Our offers are subject to change. All agreements, addenda and amendments or the rescission of the contract will require a separate written agreement and will not become legally effective before our written confirmation.
- We reserve the right to changes of the good or service provided that they are reasonable for the client.

II. Prices

- Our prices are ex works in Siegen plus shipping and packaging and value added tax unless otherwise agreed.
- Where carriage, levies or charges are introduced or increased after conclusion of the contract we will also have the right to change the price accordingly in agreements with businessmen in the case of carriage-paid or duty-free deliveries and to re-calculate these newly introduced or increased costs.

III. Delivery and Performance Period

- Delivery dates or deadlines agreed on formally or informally must be specified in writing.
- Delivery deadlines will commence upon receipt of our order confirmation, but not before clarification of all performance details and are defined as ex works in Siegen.
- Six weeks after an informal delivery date or deadline has been exceeded, the client can demand in writing that we deliver within an adequate period of time. With this warning, we will be regarded as being in arrears with delivery. Where this adequate period is not observed by us, the client will be obligated to stipulate an adequate period of grace for us in writing. After the unsuccessful lapse of this period of grace he may rescind the contract with regard to the goods and services not ready for shipping up until lapse of the period of grace. He will only be entitled to rescind the entire contract where the partial performance already rendered is of no interest for the client. We will not be liable for damage incurred to the client from delayed delivery unless the failure to deliver or to deliver on time is due to gross negligence or willfulness by us.
- In the case of force majeure or other unforeseeable or unusual circumstances or situations where no fault is attributable such as material supply bottlenecks, operational failure, strikes, lock-outs, lack of means of transport, official intervention, energy supply bottlenecks, etc., even where they are incurred to the supplier's suppliers, the delivery period will be extended to the respective extent where we are prevented from the timely fulfillment of our duty due to such circumstances. Where the good or service is infeasible or unreasonable due to the specified circumstances, we will be released from the delivery duty. Where the delivery delay lasts longer than two months, the client will have the right to rescind the contract. Where the delivery period is extended or we are released from the delivery duty the client cannot derive any damage compensation claims from this. We can only appeal to the specified circumstances where we immediately notify the client after the specified circumstances become known.

IV. Grades, Measures and Weights, Acceptance

- Grades and measurements of the material delivered to us will be exclusively determined on the basis of German materials standards; any deviations are only possible within the framework of the DIN standards.
- Proof of weight will be provided through presentation of the weight note. The total weight of the shipment will be decisive.
- Where the relevant materials standards provide for an inspection or where an inspection is agreed on, it will take place at our plant in Siegen immediately after notification of readiness for shipping. The client will bear the costs of the inspection. Where the inspection does not take place or does not take place in time we will have the right to either ship the goods without inspection after notification or to store them at the expense and risk of the client.

V. Shipping and Passing of Risk

- We will have the right of choice for packaging, shipping and transport unless otherwise agreed. We have the right, but not the duty to insure shipments in the name of and for the account of the client.
- The prerequisite for delivery ex truck unloading site is that the respective site can be reached by a route well-suited for traveling. The client will be responsible for immediate and proper unloading. Waiting times will be charged.
- Where at the client's request we ship the goods to a different site than that of the place of performance (cf. Art. X), the risk will pass to the client as soon as the goods have been handed over to the shipping agent, carrier or other person or entity assigned with the shipment. Shipment of the goods to another place within Siegen will also be regarded as shipment of the goods to a place other than the appointed site.

Where we ship the goods with our own vehicles the risk will pass upon loading of the goods onto our vehicle. In every case, the risk will pass to the client when the goods leave our plant regardless of whether the shipment is carried out from the place of performance and who will bear the shipping costs.

- Where goods are ready for shipment, a request for delivery must be made immediately. Where delivery or inspection is delayed for reasons for which we are not liable, the risk to the client will pass upon receipt of the notification of readiness for shipment. We will also have the right to ship any goods for which no delivery requests were made at the expense and risk of the client.
- We have the right to make partial deliveries and deliver quantities that exceed or are less than the volumes customary in the line of business.

VI. Terms of Payment/Set-Off

- Our invoices are payable within 14 days with 2% discount, net within 30 days. Payments may only be effected with a debt-releasing effect directly to us or to the bank/postal check account specified by us on the invoice form.
- The client may only set off his claims against our claims with claims that are uncontested or res judicata. Where he is a businessman as defined by § 1 HGB, the same will also apply to the assertion of rights of retention from a mutual transaction. Where the client is a businessman he will be obligated to pay interest of 5% p. a. in the case of delayed payment as from the due date. Where the client is in arrears with payment we can charge default interest of 8% above the basic interest rate in accordance with § 247 BGB. We reserve the right to assertion of further-reaching default damage. The client will have the right to prove lesser default damage.
- We expressly reserve the right to refuse bills of exchange. Acceptance will be for the sake of payment only in every case. Discount and bill charges will be borne by the client and will be due immediately. Bills of exchange will be accepted without guarantee for correct presentation and protest. In the case of acceptance of bills of exchange and checks our claims will be regarded as having been paid only after the former have been finally cashed in.
- Where the client fails to comply with his payment duties or where we become aware of circumstances undermining his creditworthiness such as unsuccessful debt enforcement measures against the client, submission of an affidavit or equivalent declarations in national law, the application for instatement of insolvency proceedings or similar measures, all our claims, also where we accepted bills of exchange to satisfy them, will become due immediately. In this case we will only be obligated to make further deliveries where the client offers and effects payment matching delivery. Where the client does not offer cash we will have the right to demand damage compensation for non-performance in lieu of performance or to rescind the contract provided that deliveries have not yet been made.
- The client agrees to the set off of his claims and liabilities by us.

All prerequisites for set off are to be assessed according to the time the claim arises, not on the basis of when the claim is due. The set off agreement covers the balance amount where there are current accounts. Where claims or liabilities are due, set off will be on the basis of the value date.

VII. Retention of Title

- We will retain ownership of all delivered goods until fulfillment of all our claims through payment per check or bill of exchange until they are cashed in or the final crediting of the amount (good subject to retention of title). The retention of title will be regarded as security for our current account claims. In the case of delivery of machines the client will be obligated to take out and maintain a material damage insurance policy insuring the goods against theft, destruction and damage, regardless of the reason. Upon request, proof is to be provided that this insurance was taken out and is maintained. Upon request, the client will assign the rights from the insurance contract to us.

- Where the client is in arrears with payment or otherwise fails to comply with his duties we may demand release of the purchase item and/or rescind the contract. Where we accept return of the goods, this will not constitute a declaration or rescission.
- Processing or treatment of the goods will be carried out for us as the manufacturers as defined by § 950 BGB, without entailing any obligations for us. In the case of processing by the client with other goods not belonging to us we will be entitled to a share in the ownership of the manufactured item on the basis of the ratio of the invoice value of our processed goods to the total of all invoice values of all other goods used in manufacture. Where our goods are mixed or combined with other items and our ownership of the goods is thereby extinguished (§§ 947, 948 BGB), it is already being agreed that the client's ownership in the mixed stock or uniform item will pass to us to the extent of the invoice value and that the client will store these goods for us free of charge. The items originating from the processing or in connection with the mixing will be goods subject to the retention of title as defined by the present terms.
- The client may only sell or process the goods subject to retention of title within the scope of usual business and regular business terms and as long as he is not in arrears with payment; however, he may not pledge the goods subject to retention of title or assign them as security. He is only authorized to resale where the claim from resale and ancillary rights pass to us to the extent set out in the following paragraphs. He is not authorized to dispose of the goods in any other way. Resale will be equivalent to installation on properties or buildings or use of the goods for performance of other work or supply contracts by the client.
- The client's claim from the resale of the goods together with all ancillary rights is hereby being assigned to us to the full amount of the security regardless of whether the resale is to one or several clients. Where the goods are sold by the client together with other goods not belonging to us the claim will only be assigned to us to the amount of our invoice sum. Where the goods are sold after blending, mixing or processing with other goods not belonging to us, the assignment will only be to the amount of our share in ownership in the item or stock being sold. The client has the right to collect the debts assigned to us until revocation (cf. para. 6), or as long as he is not in arrears with payment toward us.
- The client is authorized for collection of the debts assigned to us as long as our claim is not due in accordance with VI.4. In this case we will have the right:
 - to revoke the authorization for sale or treatment/processing or installation of the goods and for collection of the debts assigned to us
 - to demand the return of the goods without the client having a right of retention against this claim to the return of goods and without hereby rescinding the contract
 - to notify the third party debtors of the assignment.
- The Client will be obligated to provide the necessary information for assertion of our rights and to hand out the necessary documents.
- Where the total value of the securities for our claims permanently exceeds 20 %, we will be obligated to release securities of our choice upon the request of the client or third party affected by the excess security.
- The client is obligated to separately keep and store the goods and items produced from blending.
- Where a third party or authority seizes the goods as part of debt enforcement measures, the claims assigned to us for security, or other securities, the client must inform us immediately and provide us with the necessary documents and information for an intervention; this will also apply in the case of impairments of any kind. The client will bear any costs and damage incurred.

VIII. Defects/Guarantee/Liability

- The date the goods leave our plant in Siegen will be decisive for the contractual condition.
- The guarantee period is 12 months. This will not apply where the law prescribes longer periods in accordance with §§ 438 Sect. 1 Nr. 2, 479 Sect. 1 and 634 a Sect. 1 Nr. 2 BGB as well as in cases of injury to life, limb or health, in the case of willful or a gross negligent breach of duty by us and in the case of willful concealment of a defect. The legal provisions regarding tolling of the statute of limitations, suspension of a deadline and commencement of the statute of limitation will remain unaffected.
- Visible defects in the case of a transaction are to be reported in writing by the client within 8 days after receipt of the goods; hidden defects are to be reported in writing within the guarantee period as set out in VIII 2 after detection. In the case of a related complaint the client cannot assert any claims for material defects for the respective defects. The same will apply to complaints regarding the quantity and in the case of delivery of goods other than those agreed on in the contract.
- Claims for material defects cannot be asserted in the case of minor deviations from the agreed features, minor impairment of usability, natural wear and tear or damage incurred after passing of the risk due to faulty or negligent handling, lack of maintenance, overstraining, inadequate or improper use, faulty assembly or operation by the client or third party, improper tools, improper operation, non-compliance with the operating instructions or on the basis of external influence not prescribed in the contract. Where improper alterations or repair work is carried out by third parties, no material defect claims will arise.
- In the case of a justified and timely complaint due to defects we will take back the defective goods and will deliver flawless goods or we will opt to rectify the defective goods. Where the repeated rectification or repeated replacement delivery fails due to the same defect the client may opt to rescind the contract or demand a reduction of the purchase price.
- The client must give us the necessary time and opportunity for rectification work and replacement; this failing we will be released from liability for material defects.
- Claims by the client based on the necessary expenses for make-up performance, in particular transport, road, work and material costs are excluded where the expenses increase because the delivery item is subsequently moved to another location than the client's place of business unless the transfer is in accordance with the designated use.
- Where the delivery item continues to be used despite the detected defect we will only be liable for the original defect, but not for damage incurred to us from the original defect through further use.
- A guarantee is being assumed for replacement deliveries and make-up performance to the same extent as for the original delivery item. However, the guarantee will terminate by the latest at the end of the agreed guarantee period for the original delivery item unless the statutory guarantee period for the replacement delivery or make-up performance has not lapsed; in such a case the guarantee will terminate upon lapse of this deadline.
- Recourse claims may only be asserted by the client against the supplier in accordance with § 478 BGB to the extent that the client has not concluded any agreements going beyond the statutory claims for defects.
- Further claims by the client, in particular damage compensation and expenditure reimbursement claims due to defects of the delivery items as well as other breaches of duty from the debt relationship and illegal acts are excluded. This will not apply where there is compulsory liability such as in cases of willfulness, gross negligence, injury to life, limb or health, breach of cardinal contractual duties or e.g. according to the Product Liability Act. However, the damage compensation claim for the breach of cardinal contractual duties is limited to typical, foreseeable damage unless there is willfulness or gross negligence or liability due to injury to life, limb or health. A change in the burden of proof to the detriment of the client is not associated with the aforementioned provisions. Where the client is entitled to damage compensation and expenditure reimbursement according to this paragraph they will expire upon lapse of the statute of limitations applicable to defects for material claims in accordance with VIII 2. In the case of damage compensation claims from the Product Liability Act the statutory statute of limitations provisions will apply.

IX. Additional Terms

For the delivery of machines, the terms of the Verband Deutscher Maschinen- und Anlagenbau e. V. (Association of German Machines and Equipment) will apply for domestic business and the terms for international business in the respective valid version will apply to international clients unless no deviating terms have been concluded.

X. Place of Performance, Jurisdiction, Applicable Law

The place of performance for our deliveries and all payments is Siegen. The place of jurisdiction for all disputes arising from the contract, where the client is a full businessman, legal entity in public law or public law estate is Siegen. We will also have the right to bring action at the client's main domicile. It is agreed that the laws of the Federal Republic of Germany will apply, excluding the UN-Sales Convention.