

General Terms and Conditions

I. Preamble

1. These General Deliver Conditions shall apply to all delivery and services of the Supplier. Purchaser's acceptance of the Supplier's order confirmation is subject to the terms herein. Modification of or deviations from these General Deliver Conditions must be agreed in writing.
In the event of a conflict between any of these General Deliver Conditions and the terms of the Purchaser, including any attachment or document incorporated, the terms of this General Deliver Conditions shall prevail.
2. The object(s) to be supplied under these General Deliver Conditions is (are) hereinafter referred to as the Product, including documentation and software.
3. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, re-produce, transmitted or communicated to a third party.
4. All other agreements need to be in a written form.
5. A contract is finally agreed with our written order confirmation, not before. Order taking longer than four month may result changes in the sales price according raw material or salary changes proven in written form.
6. All technical information shown in any marketing material such as brochure, internet, proposals or similar are subject to change.
7. Any electrical installation, cable or wire, connection to other equipment are not part of the Supplier's delivery, if not mentioned differently in the order confirmation.

II. Payment

1. If no trade term is specifically agreed, the delivery shall be ex works (EXW, including loading at supplier's site, but without packaging. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract.
2. Unless otherwise agreed, the purchase price shall be paid with 40 % after order confirmation of the contract and 60 % payment when the Supplier notifies the Purchaser that the Product, or the essential part of it, is ready for delivery. Payments shall be made within 14 days of the date of invoice. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.
3. Packaging, transport and installation costs are not included into the price, if not agreed differently in the order confirmation.
4. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.
5. In case of late payment the Supplier may, after having notified the Purchaser in writing, suspend his performance of the contract until he receives payment. If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

III. Time for delivery, Delay

1. If the parties, instead of specifying the date of delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start run as soon as the contract is entered into, all official formalities have been completed, payments due at the formation of the contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.
2. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason, and, if possible, the time when delivery can be expected.
3. The Supplier shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes, and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors. The Supplier shall notify the Purchaser in writing without delay on the intervention and on the cessation of such circumstances.
4. The time for delivery is complied, when the Supplier notifies the Purchaser that the Product is ready for delivery or the Product has left the factory before expiration of the deadline.
5. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the delivering time, he shall forthwith notify the Supplier in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery. If the Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery, as if delivery had taken place. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.
6. If the delay in delivery is such that the Purchaser cannot receive the Product at all and if the product is still not deliverable, the Purchaser may in writing demand delivery within a final reasonable period. If the Supplier does not deliver within such final period and this is not due to any circumstances for which the Purchaser is responsible, then the Purchaser may by notice in writing to the Supplier terminate the contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties. If the Purchaser terminates the contract he cannot entitled compensation for the loss he has suffered as a result of the Supplier's delay. The total compensation, including the liquidated damages is not possible.

7. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of a negligent breach of a condition which goes to the root of the contract, intent or gross negligence.
8. If a special acceptance test is agreed at the Supplier's work site, the date should be agreed in a written form. If a delay caused by the Purchaser extends three work days from this date, the goods are proven as accepted automatically against a written test report.

IV. Passing of risk

1. If, in the case of delivery ex works, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the product is handed over to the first carrier. At Purchasers request and cost the carriage will be insure against theft, transport damage and fire and water damage to the purchaser's costs.
2. Partial shipments shall not be permitted, unless otherwise agreed.
3. If the purchaser is not able to accept the shipment on delivery date agreed, all risks are carried over to the purchaser on the date of recognition of delivery. Possible costs for insurances are at the purchaser's expenses.
4. If the Product is transported by an employee of interVIB GmbH to the customer's site, the risk is carried over to the purchaser at the moment of leaving the Supplier's site.

V. Retention of Title

1. The Product shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the applicable law.
2. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product in the country concerned.
3. The retention of title shall not affect the passing of risk under Clause IV.
4. The Purchaser carries all costs for insurance and stock during this period. Furthermore the Purchaser carries the costs for loading and transport back to the Supplier and any other costs resulting from the missing payment. The Purchaser has to allow free access to the goods.

VI. Liability for defects

1. Pursuant to the provisions of the following clauses, the Supplier shall remedy any defect resulting from faulty design, materials or workmanship.
2. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks. The notice shall contain a description of the defect. Where the defect is such that may cause damage, the Purchaser shall immediately inform the Supplier in writing. The Purchaser shall bear the risk of damage resulting from his failure so to notify.
3. On receipt of the notice the Supplier shall remedy the defect without undue delay and at his own cost.
4. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Product, to the extent that this is necessary to remedy the defect.
5. Unless otherwise agreed, necessary transport of the Product and/or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport.
6. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for repair, dismantling, installation and transport as a result of the Product being located in a place other than the destination stated in the contract or - if no destination is stated - the place of delivery.
7. If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may demand that the defective part is sent to him or a destination specified by him. In such a case the Supplier shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a replacement part to the Purchaser. Labor costs will not be taken over by the Supplier.
8. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.
9. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of twelve months. For the remaining parts of the Product the period shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.
10. If, within a reasonable time, the Supplier does not fulfil his obligations under clause VI 3, the Purchaser may by notice in writing fix a final time for completion of the Supplier's obligations. If the Supplier fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and in expense of the Supplier. Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defects.
11. The Supplier is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser. The Supplier is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the Product. The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing. The supplier shall neither be reliable for normal wear and tear nor for deterioration.
12. Unless otherwise agreed the Supplier's liability is limited to defects which appear in a period of twelve months from delivery.

13. Save as stipulated in clauses VI Nr. 1–11, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of intent or gross negligence or if the Supplier negligently causes damage to life, body or health. Furthermore, the limitation of liability shall not apply in cases of negligent breach of a condition which goes to the root of the contract. In case of slight negligence the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act (Produkthaftungsgesetz), for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in the case of defects the Supplier has fraudulently concealed or whose absence he has guaranteed.
14. Tolerance according to capacity or consumption +/-10% are not evaluated as defect.

VII. Consequential losses

1. Save as otherwise stated in these General Deliver Conditions there shall be no liability for either party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

VIII. Disputes and applicable law

1. The contract shall be governed by the substantive law of Germany, under exclusion of the CISG (Wiener Übereinkommen über Verträge über den internationalen Warenkauf).
2. All disputes shall be finally settled under the Rules of German Law at the Supplier's location. The language shall be German.
3. The contract shall be governed by the substantive law of the Supplier's country.
4. If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.

IX. Force Majeure

1. A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under Clause 17 (Termination) in such circumstances. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in this Clause.

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