

CMS Ing. Dr. Schreder GmbH
General Terms of Sale

I General

1. These terms apply to all our supplies and are an inseparable part of our offers and confirmations of orders to all ongoing and future transactions, even if not specifically referred to. Other terms and conditions, not previously confirmed in writing by us, are explicitly denied. Our terms of delivery shall also apply if we carry out the delivery to the Purchaser without reservations and we are aware of terms of delivery of the Purchaser that are in conflict with or contrary to our terms of delivery.
2. The written declarations made by both parties shall be deemed authoritative regarding the type and manner, in particular the scope and deadlines etc., of deliveries. Our offers shall at all times be subject to change without notice insofar as they are not expressly described as being of a binding nature. The contract shall only come into existence by way of our written confirmation and in accordance with the content therein or by way of delivery/performance. In the case of doubt our silence regarding an offer received by us shall be deemed a refusal.
3. We hereby reserve any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without our prior consent and shall, upon request, be returned without undue delay to us if the contract is not awarded to us.
4. The adequate expense allowance for drawings, sketches or samples made is to be reimbursed to us even if the planned order will not be given.
5. Partial Deliveries shall be allowed, unless they are unreasonable to accept for the Purchaser.

II Preise und Zahlungsbedingungen

1. The prices in € are ex works excluding packaging, loading, insurance, fees, taxes and VAT.
2. If we are responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. travel costs.
3. We are entitled to invoice additional costs for delay not caused by us, mainly for clarification of technical or legal prerequisites for the supply.
4. Payments are to be made in time without any deduction, free at our address for payment in the currency named in the invoice. Payment day is deemed to be the day of the crediting with us or our address for payment.
5. In case of partial invoicing the relevant partial amounts are due upon receipt of the respective invoice. This also applies to amounts invoiced based on subsequent supplies or other agreements going beyond the original contractual amount.
6. Buyer is not entitled to withhold payments for guarantee or other claims of what kind ever or to set off with counterclaims.
7. Interest of 8% p.a. above the base lending rate shall be charged in the case of delayed payments. In the event that we can furnish proof of greater damage caused by delay, we shall be entitled to claim for such damages. However, the Purchaser is entitled to provide us with proof that no or considerably less damage has occurred as a result of the delay in payment.
8. Agreed discounts or rebates are due to the performance of the full payment.

III Retention of title

1. Items pertaining to the Delivery ("Retained Goods") shall remain our property until each and every claim against it has against the Purchaser on account of the business connection has been fulfilled.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment. The Purchaser shall assign to us with immediate effect all his claims lodged against his customers or third parties resulting from the resale irrespective of whether the object of sale is resold without or following processing. The Purchaser is entitled to collect these claims subject to revocation. The Purchaser undertakes on our request to disclose the names of third party debtors and the amount of claims lodged against these, and to supply us with all other information and documents so that we are in a position to realize the claims assigned to us.
3. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations we shall be entitled to rescind the contract and take back Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by us; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that we take back Retained Goods and/or exercise the retention of title, or have the Retained Goods seized, shall not be construed or constitute a rescission of the contract, unless we so expressly declare.

IV Time for delivery; delay

1. Time-limits set for Delivery can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, time limits shall be extended appropriately.
2. The supply according to confirmation of order begins on the latest of the following dates:
 - (i) Date of confirmation of order
 - (ii) Date of clarification of all technical and legal prerequisites by buyer
 - (iii) Date on which we receive the partial payments or guaranty required before carrying out works.
3. If non-observance of the time limits is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike, lockout, confiscation or embargo such time shall be extended accordingly.
4. Purchaser's claims for damages due to a delay in Delivery as well as claims for damages in lieu of performance shall be excluded in all cases of delayed Delivery even upon expiry of a time limit set to us to effect the Delivery.
5. Packing will be invoiced at self-costs and will not be taken back.
6. Mode and route of dispatch are decided by us to the extent no other written agreement exists.
7. We are authorised to partial supply and invoicing.
8. In case the term of delivery is exceeded because of our fault buyer is entitled to withdraw from the agreement, allowing a period of grace of 8 weeks. Such period starts the day that we are served the declaration of withdrawal of buyer to be send by registered mail. Any compensatory claims of buyer because of delayed supply or in case of withdraw, to the extent allowed by law, are excluded.

9. If default is attributable to us and the Purchaser can prove that it has suffered a loss there from, the Purchaser may claim a compensation of 0.5% for every completed week of default, but in no case more than a total of 5% of the price of that part of the Delivery which because of the default could not be put to the intended use. If we are able to prove that the damage suffered by the Purchaser as a result of delay is less than the stated compensation for delay, we shall only be under obligation to settle the sustained damage.

V Transfer of risk

1. Profit and risk pass to buyer:
 - (i) at the time when the delivery is shipped or picked up by the carrier;
 - (ii) if the Delivery does not include assembly or erection, at the time when the Delivery is shipped or picked up by the carrier. Upon request of the Purchaser, we shall insure Deliveries against the usual risks of transport at the expense of the Purchaser;
 - (iii) if the Delivery includes assembly or erection, at the day of taking-over in the own works or, if so agreed, after a fault-free trial run.
2. The risk shall pass to the Purchaser if dispatch, shipping, the start or completion of assembly or erection, the taking over in the own works or the trial run is delayed for reasons attributable to the Purchaser or if the Purchaser has otherwise failed to accept Delivery.

VI Taking of delivery

The Purchaser shall not refuse to take Delivery due to minor defects.

VII Warranty and defects

In the case of claims regarding defects of quality lodged by the Purchaser it is assumed that the Purchaser has properly honored his obligations to inspect and give notice of defects. In accordance with the following regulations we are obliged to remedy eventual defects impairing functionality during the warranty period of the items supplied, having existed already at the time of delivery and being based on defective design or manufacturing by us or the materials supplied by us.

1. Claims based on Defects are subject to a limitation period of 12 months.
2. Warranty is only granted if buyer immediately reports the defects appeared in writing with detailed description.
3. Defects affecting a part of a shipment cannot lead to the objectioning of the total shipment. In case of justified complaint for defects it is within our discretion to either replace defective goods or defective parts or to choose subsequent improvement, have the defective part sent to us for subsequent improvement or grant adequate price reduction. From the moment of discovery of the defect on by buyer any further disposition concerning the goods without our express consent is not permitted; if buyer, however, does dispose he thus waives eventual claims for warranty with regard to us. Defects, which are not reported immediately the latest within three days after the goods have been received at the point of destination in writing, including exact description of the defect, are deemed to be accepted. Excepted are such defects, which cannot be detected within the three day period in spite of careful examination. Such defects are deemed to have been accepted if they are not reported within three days after discovery in the same manner as above.
4. To carry out works for warranty in the company of buyer he has to make available to us the required auxiliary workers, materials and tools free of costs. Buyer has to take all other necessary measures at his place to allow us to implement the works for warranty.
5. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, Defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on Defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
6. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labor, and material, to the extent that expenses are higher because the subject-matter of the Delivery was subsequently brought to another location than the Purchaser's branch office.
7. The Purchaser shall have no claim for damages based on defects. Any other additional claims of the Purchaser exceeding the claims provided for in this Article VIII, based on defect, are excluded.
8. If something is manufactured according to construction details, drawings, kites or other specifications of buyer our liability is limited to the realisation according to the conditions. We do not take responsibility for the sale of used goods or for repair orders or modifications and alterations.

VIII Property, copyright

1. Unless otherwise agreed, we shall supply the Delivery free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination.
2. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.

IX Other claims for damage

1. Our liability is in all cases limited to such damages having appeared at the object of our supply. Any further compensation, most of all for consequential harm caused by the defect is excluded.
2. The Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.
3. To the extent that the Purchaser has a claim for damages, it shall be time-barred upon expiration of the statute of limitations pursuant to Article VII No. 1.

X Forum and applicable law

1. Sole venue for all disputes arising directly or indirectly out of the contract shall be our registered office. However, we may also bring an action at the Purchaser's place of business.
2. Legal relations existing in connection with this contract shall be governed by Austrian substantive law, whereas the application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

XI Severability clause

The legal invalidity of one or more provisions of this Contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.

Situation as per June 2006