

GENERAL TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION

Conclusion of contracts, general

1. These General Terms and Conditions for Delivery and Installation apply to all - even future - deliveries and services. Terms and Conditions of the buyer to the contrary are hereby rejected explicitly. They shall not be legally binding, even if we have not objected to them explicitly after receiving them.
2. Our offers are subject to confirmation. All conclusions of a contract and other agreements, especially, but not limited to verbal collateral agreements and warranties given by employees or agents have to be confirmed in writing to become legally effective. Warranties and guarantees are to be expressly marked as such and confirmed by us in writing.
3. Drawings, pictures, technical data, weight, measure and service specifications relate only to their respective scope of application and therefore are merely approximately determinative, except the order confirmation expressly designates them as binding. We retain ownership and all copyrights with regard to these documents. They shall not be made available to third parties without our prior written consent. Statements contained in product descriptions, technical information and in general public information are binding, only when we declare them as such. Warranties and guarantees have to be explicitly designated as such to become effective.
4. Unless agreed otherwise, the "INCOTERMS" of the International Chambers of Commerce apply in their latest version.

Prices, payments and set-off

5. Unless agreed otherwise, our prices are ex-works or ex-warehouse and include loading. All other costs such as costs for packaging, freight, custom duties, insurance and VAT will be invoiced separately.
6. Unless agreed otherwise in writing, the agreed price shall be paid net within 30 days after the invoice date. In case payment is made by bill-of-exchange or by making up-front payments, neither cash discounts nor interest reimbursements will be granted. The buyer will be in default upon receipt of a demand for payment. Furthermore, he will be in default with demand for payment, if he does not pay within the agreed period of time or on the agreed date.
7. In case the buyer exceeds the time limit for payment or in cases of default we are entitled to claim interest on the money owed in the amount equal to the interest rate then applied by the bank, however, at minimum 8 % interest above the than applicable basic interest rate of the European Central Bank. The interest rate applied by us will be increased upon our proof of expenses incurred based on a higher interest rate or reduced if the buyer is able to establish proof of lower expenses. We reserve the right to assert further damages based on default. § 353 of the German Commercial Code ("HGB") shall remain unaffected by this provision.
8. If, after the conclusion of the contract, the financial situation of the buyer deteriorates considerably and our right to receive valuable counter-consideration from the buyer will thus be endangered, we are entitled - in case we are obliged to perform in advance - to withhold our performance until the buyer has performed or has provided an adequate security. In case the buyer is, after having received a respective request, neither willing to perform concurrently nor to provide a security, we will be entitled to rescind the contract.
9. The buyer shall be entitled to a right of retention if and to the extent it is based on the same contractual relationship.
10. The buyer may set off against our claims only to the extent his counter-claims are accepted by us as existing, due and final or if such counter-claim is approved as final by a court.

Dates and periods for delivery

11. Compliance with periods for delivery require timely receipt of all documents to be provided by the buyer, necessary permissions and releases, especially plans and designs, and compliance with the terms of payment and all other contractual obligations of the buyer. If the buyer does not fulfill these obligations, the delivery period automatically extends appropriately. This does not apply, if the delay is due to a circumstances within the supplier's control.
12. We are entitled to partial delivery and partial performance.
13. In cases of unforeseeable events, we are allowed to postpone the delivery according to the duration of the impediment and an appropriate start-up period. An unforeseeable event is deemed a circumstance which we could not avoid even by applying reasonable diligence and care, such as war, currency, trade policy or other governmental acts, civil disorders, natural occurrences, fire, strike, lock-out, interruption of operations or traffic and all other cases of force majeure, which endanger the completion of the contract, complicate it substantially or render its performance impossible. In such case, we are entitled to withdraw from this contract without an obligation to pay damages. The buyer shall be entitled to claim a statement from us specifying whether we intend to withdraw or will perform within a reasonable period of time. In case we do not make a respective statement, the buyer will be entitled to withdraw from this contract. Partial delivery and partial services cannot be rejected by the buyer, unless he has no proven commercial interest to receive partial deliveries and/or services.

14. In case of a delay of delivery for other reasons, the buyer has to grant an additional period of time in writing. If we do not dispatch the item within the additional period or provide the agreed services, the buyer may withdraw from the contract after the expiration of the additional period with respect to all items that have not been dispatched, notified to be dispatched or performance did not take place. Only to the extent the buyer is not interested in partial performance, he may withdraw from the entire contract. In case of damages incurred by the buyer due to a delay for which we can be held responsible, we will compensate damages, but only to the amount of 0,5 % per week of that portion of the purchase price which has to be deducted from the purchase price due to the delay and not more than 5 % of such portion in total. This is not applicable in cases of willful misconduct, gross negligence or harm to life, body or health. This does not shift the burden of proof to the buyer. The buyer may rescind the contract only to the extent we are responsible for the delay. The buyer is obligated to declare within a reasonable time upon our demand whether he will withdraw from the contract due to a delay and/or will claim damages instead performance or if he insists on performance.

Shipment, packaging and passing of the risk

15. Shipment of the goods will be at the buyer's cost and risk. The risk passes to the buyer upon handing over of the goods to the carrier but at the latest when the goods leave our warehouse or factory even in cases of "free delivery". If dispatch of the goods is delayed due to circumstances within the buyer's control, the risk of loss passes to the buyer upon receipt of notice that the goods are ready to be shipped.
16. Goods ready to be shipped have to be called on immediately. Otherwise, we are entitled to ship the goods or at our discretion to store them and immediately charge the buyer for the costs.
17. In case shipment and delivery of the goods is delayed upon buyer's request for more than one month after receipt of notice that the goods are ready to be shipped, the buyer may be charged with costs for storage in the amount of 0,5 % of the total value of the goods for each month commenced, but not more than 5 % of the total value. The parties may prove higher or lower costs for storage.
18. Unless agreed otherwise, we may choose the mode of packaging, shipment and transportation.

Retention of title

19. We retain full title to the goods to be delivered until all claims, irrespective of their legal ground, are settled, even if payments for specific claims have already been made. The retention of title serves as surety with regard to our balances in case of current accounts. If a cheque/bill-of-exchange procedure is agreed between the parties, we retain title until we are no longer liable for any claim based on the bill-of-exchange. The same applies to contingent liabilities we entered into for the buyer.
20. Processing of the goods we retained title to is carried out for us according to § 950 BGB, whereby we will be deemed manufacturer in the sense of § 950 BGB. If the buyer mixes the goods we retained title to with goods we do not own, we shall become co-owners of the manufactured goods in that ratio which results from the relation of the value of the goods we retained title to to the value of the other goods used for manufacture.
21. If the goods we retained title to are mixed with other goods causing us to loose title to the goods we retained title to (§§ 947, 948 BGB), we hereby agree that title to the (mixed) goods shall pass to us to the extent and in the amount the goods we retained title to were invoiced and that the buyer shall store the goods for us without charge.
22. The manufactured goods which are the result of the mixture or connection of the goods shall be deemed goods to which title is retained according to these General Terms and Conditions.
23. The buyer may sell or process the goods to which title is retained in his general course of business and subject to his general terms and conditions as long as he is not in default. He may sell the goods if the accounts receivable resulting from the sale including ancillary rights pass over to us to the extent outlined hereafter. The buyer may not dispose otherwise. The sale of the goods to which we retained title shall be treated equally to the buyer's use of the goods to which we retained title for performance of other contractual obligations of the buyer.

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24. With effect as of today, all accounts receivable and ancillary rights of the buyer resulting from the sale of the goods we retained title to are hereby assigned to us. Such accounts receivable and ancillary rights shall serve as security with regard to our claims to the same extent as the goods we retained title to. If the buyer sells the goods we retained title to together with other goods not owned by us, the accounts receivable resulting from such sale will pass to us only to the extent stated in our invoice. If the buyer sells the goods under retention of title after they are mixed, processed or manufactured with goods not owned by us, the accounts receivable resulting from such sale will pass to us only in the amount and to the extent of our co-ownership interest in the goods.
25. As long as the buyer is not in default he is entitled to collect the accounts receivable resulting from the resale until our revocation which we may exercise at any time. Upon our request, the buyer must inform his customers immediately of the assignment of the accounts receivable and provide us with the information necessary to collect the accounts receivable.
26. The buyer has to notify us without undue delay of any attachment or other interference with the goods we retained title to by third parties.
27. If the buyer is in default of payment, we are entitled to restitution of the goods we retained title to without the buyer being entitled to claim a right of retention. Exercising our right of retention of title shall be deemed a rescission of the contract only if expressly designated as such. After prior notification to the buyer, we are entitled to enter the buyer's facilities in order to remove the goods we retained title to for purpose of impounding.
28. If the value of the securities put up for us exceeds our claims for more than 20 %, we are upon request of the buyer obliged to release securities of our choice.
- b) Our obligation to pay damages is determined exclusively by no. 41-43.
- c) The above obligations only exist, to the extent the buyer informs us without undue delay in writing of claims of a third party, does not acknowledge the infringement of a protective right and the right to negotiate and to defend against such claim remains with us. If the buyer refrains from using the goods in question in order to minimise the damage or for other reasons, he is obliged to point out to the third party that this behaviour does not constitute an acknowledgement of responsibility for any infringement. Claims of the buyer against us are excluded to the extent he is liable for the infringement of protective rights.
34. Claims of the buyer are also excluded, to the extent the infringement of protective rights is due to specific requirements of the buyer or due to an unforeseeable use of the goods or due to the buyer modifying our goods or using them with other goods.
35. In case of an infringement of protective rights, the claims of the buyer mentioned in no. 33 a) are subject to the provisions of no. 29 - 32 above. The same applies in case of other defects of title. Further or other claims of the buyer for defects of title than those mentioned in no. 33-35 against us or our vicarious agents are excluded.

Installation and dismantling of accumulators

36. Unless agreed otherwise in writing, if we are charged - within or outside the scope of a contract - with the filling, setting into operation or installation of batteries, the following applies:
37. Payment is made according to the contractually agreed hourly rate or lump-sum. If nothing is agreed, our latest lump-sum list prices apply.
38. If installation, dismantling or setting into operation is delayed due to circumstances especially regarding, but not limited to the construction site, for which we are not responsible, the buyer has to bear the costs for the waiting periods and further necessary travel expenses of our personnel to a reasonable amount.
39. The buyer has to inform us prior to the start of performance about the local circumstances and special features of the surroundings. The agreed payment is based upon unlimited access to the place of performance and compliance of all other duties' to be respected by buyer in this regard.
40. We charge our general rates for disposal due to dismantling and return delivery of accumulators.

Liability and period of limitation

41. In the event that the Buyer cannot use the Goods for the contractually agreed upon purpose due to Seller's faulty or incomplete technical advice, operational instructions or in case of breach other collateral duties, the Seller's liability to the exclusion of any other claims shall be likewise subject to No. 29 to 35, 42 and 43.
42. The Seller shall be liable for damages, not occurring on the delivered item itself - irrespective of its legal basis - only in cases of
- intent,
 - gross negligence of its owners/executives or senior managers,
 - damages to life, body, health,
 - for defects, intentionally concealed or the absence of which was guaranteed by him,
 - by defects of the delivered items to the extent liability is mandatory according to product liability laws for goods of private use,

In case of a breach of a material contract obligations, the Seller shall also be liable in case of gross negligence of his employees and in case of ordinary negligence, in the latter case any liability shall be limited to damages reasonable foreseeable at the moment of the conclusion of the contract, reasonable.

Any further claims for damages shall be excluded.

43. All claims of the Buyer - irrespective of their legal basis - shall become time-barred after a period of 12 months. For intentional or malicious actions and for claims based on the product liability laws, the statutory period of limitation shall apply. This limitation shall also apply for defects of building works or for delivered items which due to the customary purpose of use were assembled with a building and have caused defects of such building.

Place of performance, jurisdiction; applicable law

44. For all obligations, Brilon is place of performance.
45. If the buyer is a merchant or a public limited company, the place of jurisdiction - even in cases of cheque/bill of exchange transactions - is the place of our registered office. The same place of jurisdiction applies, if the buyer is not domiciled in Germany, changes his domicile within Germany after entering into the contract, or his domicile or residence is not known at the time suit is filed. We may also sue the buyer at the place of his registered office.
46. For all legal relationships between us and the buyer, German law is applicable. The United Nations Convention on the International Sale of Goods ("CISG") shall not apply.

Personal data

47. We store personal data of the buyer via electronic data processing.

Defects as to quality

We are liable for defects as to quality according to the following:

29. If parts or services are defective at the time the risk passes and provided the warranty period has not yet expired, we may choose to either repair the goods or redeliver free of charge. Warranty claims concerning defects as to quality expire after 12 months. This does not apply, if the law determines a longer period of limitation (§ 438 para. 1, no. 2, § 479 para. 1 and § 634 a para. 1, no. 2 German Civil Code ("BGB")). The seller has to notify us immediately in writing about a defect as to quality.
30. The buyer may withhold payment reasonable in proportion to the defect. He may only withhold payment, if he notifies the seller of the defect and provided the buyer's entitlement to do so is beyond reasonable doubt. In case the notice of defect was unjustified, we are entitled to claim compensation for expenses incurred from the buyer. In case a defect as to quality exists, we are entitled to redeliver within a reasonable period of time. We have the right of at least three attempts to carry out subsequent improvements unless the nature of the defect implies a higher number of subsequent improvements. If redelivery fails, the buyer may - irrespective of other claims for damages according to no. 41-43 hereinafter - rescind the contract or reduce the payment.
31. Claims for defects as to quality are excluded in cases of minor variations from the contractual agreed quality, minor derogation from the fitness of the goods for use, wear and tear or in case of damages that arise after passing of the risk due to careless or improper treatment, excessive use, improper equipment, defective construction works, inappropriate construction ground or defects that occur due to influences not anticipated by the contract, and in case of non-repeatable defects of software. In case of improper repairs or modifications by the buyer or a third party, claims for defects as to quality are excluded.
32. Claims of the buyer concerning the compensation for expenses necessary for another attempt of redelivery, such as expenses for transport, work, material or travelling are excluded, to the extent the expenses have increased due to the fact that the goods were transported to a place different from the place of delivery, except such transport was in line with the intended use of the goods in question. If the transaction concerns consumer goods, the buyer is entitled to recourse only to the extent the buyer and his customer did not enter into an agreement concerning the liability for defects as to quality beyond the claims provided by law. Concerning the scope of the buyer's recourse claims against us, the first paragraph of no. 32 shall apply. No. 41-43 are applicable to claims for damages. Further or other claims for damages than those mentioned in no. 29-32 of the buyer against us or our vicarious agents for defect as to quality are excluded.

Industrial property rights and copyrights, defects of title

33. Unless agreed otherwise, we are obliged to deliver the goods only with regard to the country of destination free from industrial property rights and copyrights of third parties (in the following: protective rights). If a third party files a damage claim against the buyer for infringement of protective rights due to deliveries duly used by the buyer, we shall be liable within the limitation period mentioned in no. 29 as follows:
- a) We will at our choice, either obtain a licence for delivery, modify the goods in such a way that protective rights are not infringed or exchange the goods. In case it will be unreasonable for us to act in the aforementioned way, the buyer may rescind the contract or reduce his payment.