

General Terms and Conditions of Delivery and Assembly (as of July 2018)

Contract conclusion and general provisions

1. All our – even future – deliveries and services are exclusively governed by these General Terms and Conditions of Delivery and Assembly. We hereby explicitly reject any conflicting terms and conditions of business of the customer. We are not bound by them, even if we have not explicitly objected to their application once again after receipt of such conflicting terms and conditions. Even if we should refer to a letter which contains or refers to terms and conditions of the customer or a third party, this must not be deemed to constitute consent to their application.
2. In all cases, our offers for contract conclusion are without engagement and subject to change unless they are explicitly referred to as binding or stipulate a certain time limit for acceptance. We may accept orders or engagements within 14 days from receipt („Zugang“).
3. The legal relationships between us and the customer are exclusively and conclusively governed by the written sales contract including these General Terms and Conditions of Delivery and Assembly. The said sales contract stipulates in full detail the entirety of agreements made between the contracting parties as regards the subject matter of the contract. Oral commitments, if any, made by us before contract conclusion are not binding in legal respect and all oral agreements made between the contracting parties are superseded by the written contract unless it is expressly agreed that the oral arrangements continue to be effective and binding. Changes and amendments to the agreements made between the contracting parties, including to these General Terms and Conditions of Delivery and Assembly, must be in writing („Schriftform“) to be valid. Our employees other than our managing directors or Prokuristen² are not entitled to enter into oral agreements contrary to the aforesaid requirement. Product guarantees as well as representations and warranties need to be expressly referred to as such and confirmed by us in writing.
4. Drawings, illustrations, technical data, specifications of weight, dimensions and performance are only approximate unless the contractually agreed purpose of use requires absolute conformity. We reserve all property rights and copyrights in these documents; they must not be disclosed or made available to third parties without our written consent. Any statements or specifications contained in our product descriptions, technical data sheets or other general information that is publicly available are only binding if they are explicitly confirmed by us.
5. Any legally relevant declarations and notifications to be made to us by the customer after contract conclusion (e.g. fixing of time limits, notice of defects, declaration of withdrawal or reduction of the purchase price) must be made in text form („Textform“) to be valid.

Payment, prices, set-off and EU entry certificate

6. Unless otherwise agreed, our prices are ex works or warehouse, loading included (FCA Incoterms 2010). All other costs such as the costs of packaging, freights, customs duties, insurance premiums etc. as well as the statutory value-added tax are charged separately.
7. If the customer, in addition to his postal address, also uses an email address for his business communication, we are entitled to transmit our invoice to the customer exclusively by electronic means (by email) unless the customer objects to the electronic transmission of invoices.
8. In default of any written agreement to the contrary, the agreed price is due for payment net cash without deduction within 30 days from the invoice date. Payment is deemed in time if received by us before the expiry of the aforesaid period. From the time of expiry of the aforesaid period for payment, the customer is deemed to be in default („Verzug“). The customer, during the period of default, is liable to pay us interest on the purchase price at the respective statutory interest rate valid at the time. We reserve the right to claim compensation of any further damage we incur as a result of the default („Verzugsschaden“). In our business relationships with merchants („Kaufleute“), our right to claim interest from the due date pursuant to the German commercial rules (§ 353 HGB – German Commercial Code) remains unaffected.
9. The customer is only entitled to set-off or retention if and to the extent the customer's claim is undisputed or has been established by a final non-appealable court decision (*res judicata*).
10. If, in the case of intra-Community delivery which is exempt from VAT according to § 4 no. 1 b) in combination with § 6a UstG (German VAT Act), the customer himself or a carrier commissioned by him collects the goods intended for delivery, the customer is obliged under § 241 subs. 2 BGB (German Civil Code) to provide us with a signed written declaration confirming that the goods in question are shipped to and actually enter another EU member state („Gelangsbestätigung“ – entry certificate). This entry certificate must state the name and address of the customer, the designation and quantity of the goods delivered, the date of collection by the

customer and that of entry of the goods to the other EU member state whereby the exact destination is to be indicated. The entry certificate must be submitted to us no later than 1 month after collection of the goods. If the customer, despite our request, fails to comply with this obligation even after expiry of an additional reasonable period granted for submission, we are entitled to subsequently invoice the customer for the statutory value-added tax payable in Germany for the goods delivered.

Delivery times and dates

11. Compliance with delivery times is subject to receipt in due time of all documents, necessary permits, authorizations and approvals, especially of plans, to be provided by the customer according to the contract and is further subject to compliance by the customer with the agreed terms of payment and other obligations incumbent on him. If the customer fails to fulfil these conditions, the times for delivery or service provision will be extended by the period during which the customer fails to comply with his obligations under the contract concluded with us.
12. We are only entitled to make partial deliveries and provide partial services if such partial delivery is reasonably usable for the customer for the purpose of use intended under the contract and delivery of the remaining part of the goods is secure and the customer does not incur any substantial additional expenses or costs as a result of the partial delivery (unless we undertake to bear these costs).
13. If we are unable to comply with binding delivery times for reasons not attributable to us („non-availability of performance“), we will inform the customer to that effect without undue delay („unverzüglich“) and at the same time inform him about the presumable new delivery time. If performance also is not available within the new delivery time, we are entitled to withdraw from the contract in whole or in part. In this case, we will return/ refund to the customer any consideration/ amount already provided/ paid by him without undue delay („unverzüglich“). Non-availability of performance in terms hereof is deemed to include but not limited to non-timeous delivery to us by our own suppliers, if we have entered into a congruent covering transaction, no fault is attributable to us or our own supplier, or we are not liable for procurement in the individual case in question.

Dispatch, packaging, passing of risk, approval

14. The goods to be delivered are dispatched at the customer's expense and risk. The risk passes to the customer upon hand-over of the goods (whereby the beginning of loading is decisive) to a forwarder or carrier, but no later than upon departure from our warehouse or works, even if delivery is made free destination. If dispatch is delayed due to any act or conduct of the customer, the risk already passes to the customer as soon as notice of readiness of the goods for dispatch is given to him. This also applies in the case of partial deliveries or if we have agreed to provide supplementary services (such as dispatch or assembly).
15. The customer is obliged to collect or call for delivery of goods which were advised to the customer to be ready for dispatch without undue delay („unverzüglich“). Otherwise, we are entitled, at our choice, to either dispatch the goods or store them at the customer's expense and risk and invoice the customer for the goods immediately.
16. If, upon request by the customer, dispatch or delivery is postponed by more than 1 month after notice of readiness for dispatch has been given to the customer, we are entitled to charge to the customer for each full week of postponement warehousing charges amounting to 0.25% of the price of the goods to be delivered which are however limited to a maximum total of 5% of the said price. This is however without prejudice to our right to evidence higher damage incurred by us as well as our right to assert statutory claims to which we may be entitled; the aforesaid lump sum will be set off against any further monetary claims asserted by us. The customer is in turn entitled to prove that we have not incurred any damage at all or considerably less damage than the above-mentioned lump sum.
17. In default of any specific agreement to the contrary, we may choose the mode of packaging, mode of dispatch and transportation means in our sole discretion. We will only insure the goods against theft, breakage and damage during transport or damage by fire or water or other insurable risks upon the customer's explicit request and at the customer's expense.
18. If and to the extent that the goods delivered are subject to approval („Abnahme“), the risk passes to the customer upon approval. If the customer has not declared approval of the goods, the goods delivered are nonetheless deemed approved if
 - the delivery and, if we are obliged to perform assembly, too, also the assembly has been completed,
 - we have informed the customer to that effect, pointing out at the same time that the goods will be deemed to have been approved under the conditions stipulated in sec. 18 (fictitious approval) and have requested the customer to inspect and approve the goods,
 - since delivery or assembly, a period of time has passed within which, given the specific nature of the delivered goods, the customer can reasonably be expected to have inspected and approved the delivered goods under normal conditions, but in no case more than 12 working days („Werktage“), or the customer has started to use the delivered goods (e.g. by operating or commissioning them) and,

¹ An order is deemed received („Zugang“ in terms of German law) if and as soon as it has come into the recipient's sphere in the way that the recipient can reasonably be expected to take note of it.

² The „Prokurist“ is the holder of a „Prokura“ which is a special authority granted under § 48 et seq. of the German Commercial Code to act on behalf of the company in respect of all transactions in and out of court within the scope of mercantile trade.

in this case, 5 working days („Werktage“) have passed since delivery or assembly and

- the customer, during such period, has not inspected and approved the goods for reasons other than a defect reported to us which substantially impairs the use of the delivered goods or renders their use impossible.

Reservation of title

19. We reserve title to the goods sold and delivered to the customer until all our current and future claims arising from the sales contract and an ongoing business relationship have been paid in full.
20. Any working, treatment or processing of the goods delivered subject to reservation of title is deemed made for us as a manufacturer within the meaning of § 950 BGB (German Civil Code), without any obligations arising for us therefrom. If the goods are worked or processed together with other goods not belonging to us, we will acquire co-ownership of, and share title to the newly manufactured item in the proportion of the invoice value of the processed goods delivered by us subject to reservation of title and the aggregate of the invoice values of the other goods used for the manufacture of the new item.
21. If the goods delivered by us are mixed or combined with other items and such mixing or combination causes our ownership right in the goods delivered subject to reservation of title to expire (§§ 947, 948 BGB – German Civil Code), we agree with the customer already now that ownership of the mixed goods or the new single item is transferred to us to the extent commensurate with the invoice value of our goods delivered subject to reservation of title, and that the customer will retain these goods for us without charge.
22. The items generated as a result of the processing or combination or mixing are deemed to be goods subject to reservation of title within the meaning of these General Terms and Conditions.
23. The customer is only allowed to resell, work or process the goods delivered subject to reservation of title in the ordinary course of business and under his regular conditions of business and provided he is not in default („Verzug“). The customer is only entitled to resell the goods if the claims arising from the resale as well as any ancillary rights associated therewith are transferred to us to the extent described in the following paragraphs. The customer is not entitled to otherwise dispose of the goods. The preceding provisions on resale also apply accordingly in the case that the goods delivered subject to reservation of title are used by the customer to fulfil other contracts for work and services („Werkverträge“³ / „Werklieferungsverträge“⁴).
24. The customer assigns to us already now, in the full amount, all claims arising from the resale of the goods delivered subject to reservation of title as well as all ancillary claims associated therewith. They serve as security for our claims to the same extent as the goods delivered subject to reservation of title. If the goods delivered subject to reservation of title are sold together with other goods not belonging to us, the claims will only be assigned to us in the amount that corresponds to our invoice amount. If the goods delivered subject to reservation of title are sold after they have been combined or mixed or worked or processed with other goods not belonging to us, the claims will only be assigned in the amount that corresponds to the value of our co-ownership share in the sold item or the sold mixed goods.
25. The customer is entitled to collect the claims from the resale until we revoke – which we are allowed to do at any time – his authorization to collect and as long as the customer is not in default („Verzug“). The customer, upon our request which we may utter at any time, is obliged to inform his own customers without undue delay („unverzüglich“) of the assignment of the claims in our favour and provide us with all information required for the collection.
26. The customer is obliged to inform us without undue delay („unverzüglich“) of any seizure of or other interference with the goods delivered subject to reservation of title by third parties.
27. If the customer is in breach of the contract, especially in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract according to the statutory provisions and request return of the goods by virtue of the withdrawal and the reservation of title. If the customer fails to pay the purchase price due, we will only be entitled to assert the aforesaid rights if we have granted the customer a reasonable additional period for payment beforehand which has expired without result or if, according to the statutory provisions, the grant of such an additional period is dispensable.
28. If the value of the security provided to us exceeds, not only temporarily, the amount of our claims by more than 10 %, we are obliged upon request by the customer to release an appropriate part of the security which we may choose in our sole discretion.

Defects in quality

29. The customer's rights in the case of defects in quality or title are governed by the statutory provisions unless otherwise agreed hereinafter. Customer's claims for defects are subject to the condition of compliance by the customer with his statutory obligation to inspect the goods and give notice

of defects, if any (§§ 377, 381 HGB – German Commercial Code). If a defect is found during the inspection or later, the customer is obliged to give us written notice of defect without undue delay („unverzüglich“). Notice of defect is deemed given without undue delay („unverzüglich“) if it is given within 2 weeks whereby timely dispatch of the notice is deemed sufficient for compliance with the aforesaid time limit. The customer, regardless of the said obligation to inspect and give notice of defect, is obliged to give written notice of obvious defects (including wrong/aliquid delivery and short delivery) within 2 weeks from delivery whereby again timely dispatch of the notice is sufficient for compliance with the said time limit. If, for the customer, the transaction constitutes a commercial transaction („Handelsgeschäft“ within the meaning of § 343 HGB – German Commercial Code) and the customer fails to comply with his obligation to duly inspect and/or give notice of defects, if any, our liability for such non-reported defects is excluded.

30. If the delivered goods are defective, the customer may request subsequent performance („Nacherfüllung“), at his choice either by remedy of the defect („Nachbesserung“) or by delivery of non-defective goods (substitute delivery – „Ersatzlieferung“). If the customer fails to opt for one of these two rights, we may request him to do so within a reasonable period fixed by us. If the customer fails to make his choice within the said period, the right to choose the mode of subsequent performance devolves on us upon expiry of the period.
31. Unless agreed otherwise, the place of subsequent performance („Erfüllungsort“) is our business domicile in Brilon.
32. We are entitled to make subsequent performance („Nacherfüllung“) dependent on the customer's payment of the purchase price due. The customer is however entitled to withhold such part of the purchase price as is appropriate and reasonable with regard to the existing defect.
33. The customer is obliged to grant us the time and opportunity required for the subsequent performance („Nacherfüllung“); in particular he is obliged to hand the allegedly defective goods over to us for inspection and testing. In the case of substitute delivery („Ersatzlieferung“), the customer is obliged to return the defective goods to us according to the statutory provisions.
34. We will bear the expenses required for inspection, testing and subsequent performance („Nacherfüllung“) including but not limited to the costs of transport, labour, material and tolls if the goods are actually found to be defective. Otherwise, we are entitled to claim from the customer reimbursement of the costs incurred by us in connection with the unjustified request for defect remedy (including but not limited to the costs of inspection, testing and transport) unless the customer was unable to realize or understand that the goods are not defective.
35. If the subsequent performance („Nacherfüllung“) has failed or a reasonable period fixed by the customer for subsequent performance has expired or is dispensable according to the statutory provisions, the customer may withdraw from the contract or reduce the purchase price. In the case of a minor defect, the right of withdrawal is excluded.
36. The customer's claims relating to the expenses required for the subsequent performance („Nacherfüllung“) including but not limited to the costs of transport, labour, material and tolls are excluded if and to the extent that these expenses are increased because the delivered goods have been subsequently relocated to a place other than the place of delivery or, where applicable, the contractually agreed place of installation unless such relocation is in line with the intended use of the goods.
37. The customer is only entitled to assert statutory recourse claims against us insofar as the customer has not concluded with his own customer an agreement going beyond the statutory claims for defects. This applies accordingly as regards the scope of the customer's recourse claim against us.
38. The customer, even in the case that the goods are defective, is only entitled to damages resp. reimbursement of futile expenses according to the provisions in sec. 48; otherwise, such claims are excluded.

Industrial property rights and copyrights; defects in title

39. Unless otherwise agreed, we are obliged to ensure that the delivered goods are free of third-party industrial property rights or copyrights (hereinafter „IP rights“) only with respect to the country of destination of the delivery and the country where the goods are contractually agreed to be used.
40. If a third party asserts justified claims against the customer for an infringement of IP rights caused by the goods delivered by us which are used by the customer in conformity with the contract, we will be liable to the customer during the period stipulated in sec. 50 as is described in the following:
 - a) We will, at our choice and expense, either procure a right of use for the goods in question or change them in the way that they no longer cause an infringement of the IP right or replace the goods. If we are unable to provide this at conditions reasonably acceptable to us, the customer is entitled to the statutory rights of withdrawal or reduction of the purchase price.
 - b) Our liability for damages is exclusively governed by the following sections 48 to 50.
 - c) We only accept liability as described above if and to the extent that the customer has given to us written notice of the claims asserted by the third party without undue delay („unverzüglich“) and has not acknowledged the infringement and makes sure that all defence measures and settlement talks are reserved to us unless non-compliance by the customer with these obligations does not cause

³ A German „Werkvertrag“ is a contract for work and services under which the contractor undertakes to bring about a particular result (e.g. repair a car, paint a portrait, erect a house etc.)

⁴ A German „Werklieferungsvertrag“ is a contract for work and services under which the contractor also supplies the material from which non-fungible movable items are to be made („Werklieferungsvertrag“).

any worsening of our legal position. If the customer, for reasons of mitigation of damage or other good cause, ceases use of the goods, he is obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of IP rights. If the infringement of IP rights is attributable to the customer, the customer is precluded from asserting any claims.

41. The customer is also precluded from asserting any claims if the infringement of IP rights is due to special requirements or specifications given by the customer or was caused by a special kind of use of the goods which we were unable to foresee or by the fact that the goods were modified by the customer without our prior consent or were used together with other products not delivered by us which we could not reasonably be expected to foresee.
42. Otherwise, in the case of infringements of IP rights, the provisions in the preceding sections 29 to 38 apply accordingly to the customer's claims described in the preceding sec. 40a); the same applies in the case of other defects in title.

Assembly and disassembly

43. If, in the context of sales contracts or otherwise, we are commissioned to fill, commission or assemble storage batteries, charging stations or other goods to be delivered (with or without performing any follow-up services), the conditions set out below apply unless otherwise agreed in writing upon contract conclusion:
44. The agreed services will be charged at the flat rates or hourly rates agreed in the contract. If no such rates have been agreed, our current flat rates according to the price list valid at the time apply.
45. If installation, assembly, disassembly or commissioning is delayed for reasons, especially reasons relating to the installation site, for which we are not responsible in terms of fault, the customer will be liable for reasonable costs incurred for the waiting time, recharging of the storage batteries delivered, if required, and additional trips which our staff may be required to undertake.
46. The customer, prior to the commencement of service provision, is obliged to inform us in detail about the situation on site and draw our attention to any existing particularities. The remuneration is deemed agreed subject to the condition of unimpaired access to the place of performance and fulfilment by the customer of all obligations to cooperate and assist incumbent on him.
47. Disposal of material which may become necessary in connection with the disassembly or return of storage batteries will be charged at our usual rates.

Liability

48. Unless otherwise stipulated in these General Terms and Conditions of Delivery and Assembly including the provisions set out below, our liability for breach of contractual and non-contractual duties is governed by the statutory provisions.
49. We are liable for damages, regardless of the legal basis, only in the case of
- intentional conduct,
 - grossly negligent conduct of the owner/ executive bodies („Organe“) or executive employees,
 - intentional or negligent injury of the life or limb or health,
 - defects which were fraudulently concealed or the non-existence of which was warranted,
 - defects of the delivered goods if and to the extent the Produkthaftungsgesetz (German Product Liability Act) provides for liability for personal injury or damage to privately used property.

In the case of intentional or negligent breach of fundamental contractual duties (which are duties the fulfilment of which is an indispensable condition for the proper performance of the contract and on the compliance with which the contractual partner, as a rule, relies or is reasonably allowed to rely), we also accept liability for gross negligence committed by non-executive employees and for slight negligence; in the latter case our liability is however limited to the typical and reasonably foreseeable damage. Any further claims are excluded.

Limitation

50. All claims of the customer, regardless of the legal basis, become time-barred after expiry of 12 months. The limitation periods runs from hand-over of the goods; if and to the extent the goods are agreed to be subject to approval („Abnahme“), the limitation periods runs from the time of approval. Intentional or grossly negligent conduct, claims asserted under the Produkthaftungsgesetz (German Product Liability Act) and damage resulting from the injury of the life or limb or health are subject to the statutory limitation periods. The statutory limitation periods also apply in the case of defects of a construction or building as well as for goods which, according to their regular purpose, were used for a construction or building and have caused a defect in the construction or building. Other special statutory provisions on limitation (including but not limited to § 438 subs. 1 no. 1, § 438 subs. 3, § 444, § 445b BGB – German Civil Code) remain unaffected, too.

Place of performance, place of jurisdiction and governing law

51. The place of performance („Erfüllungsort“) is Brilon.

52. If the customer is a merchant („Kaufmann“) or a legal entity under public law, the place of jurisdiction is our business domicile in Brilon. The same applies if the customer has no place of general jurisdiction („allgemeiner Gerichtsstand“) in the Federal Republic of Germany. We are however also entitled, in our discretion, to sue the customer at his domicile. However, for actions brought against us, the place of exclusive jurisdiction is Brilon. This is without prejudice to any mandatory statutory provisions governing exclusive jurisdiction.

53. All legal relationships between us and the customer are exclusively subject to the law of the Federal Republic of Germany which governs the legal relationships between domestic parties. The application of UN Sales Law is excluded.

Personal data

54. We store personal data of the customer by electronic data processing means.