

General Terms and Conditions of Repair and of Contract

These Terms and Conditions are part of all our offers, tenders and contracts for goods and /or services in both current and future commercial relationships. Deviant provisions, particularly the contradictory terms and/or conditions of business of clients, and ancillary provisions are subject to our express written agreement before they may become a contract part.

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| <p>1. Making Contract / Goods and Services Subject Matter</p> <p>1.1 Our offers and tenders are not binding.</p> <p>1.2 Contracts with us and amendments thereto only come into effect when we have accepted contracts / orders in writing or have agreed to amendments with clients in writing or have rendered and/or delivered the goods and/or services ordered by the client.</p> <p>1.3 Our goods and services are conclusively described in the offer / tender or in the order confirmation, including any specifications needed.</p> <p>1.4 Rules applicable in the country of destination of the goods and/or services to be rendered by us (e.g. accident prevention rules, technical standards, etc.) are only to be observed by us to the extent we were notified of the need to adhere to same by the client before making contract and have declared ourselves in agreement with their validity in writing.</p> <p>2. Prices</p> <p>2.1 Our prices are net ex works excluding shipping, packing and other ancillary costs (costs for insurance, customs, taxes, etc. in particular), which we invoice our clients separately.</p> <p>2.2 We are entitled to demand payment of the price for the goods and/or services rendered that tallies with that invoiced our other clients at the time of such rendering should a period of more than 4 (four) months lie between the making of contract and the rendering of such goods and/or services.</p> <p>3. Terms and Conditions of Payment</p> <p>3.1 All payments are to be made to our head office net without deduction of any cash discounts, expenses, taxes, fees, charges, customs imposts or the like.</p> <p>3.2 We can only accept bills of exchange by prior written agreement and subject to their discountability. Bills of exchange and amounts paid by cheque will first be credited the client when the equivalent amount is at our sole and unconditional disposal. All and any costs incurred are to be reimbursed.</p> <p>3.3 From the date any payment becomes due and payable interest is due to us of 5% p.a. and of 8% over the valid base interest rate from the date any such payment/s are in arrears. We reserve the right to assert further damages for arrears where applicable.</p> <p>4. Acceptance and Approval</p> <p>4.1 The client must accept and/or approve the goods and/or services immediately after being requested to do so by us at the (maker's) works or warehouse nominated by us. Should the goods and/or services not be accepted, or</p> | <p>acceptance be delayed, for reasons for which we cannot be held liable, then this shall not affect the agreed date/s on which payment/s become/s due and payable.</p> <p>4.2 Should a client not accept / approve goods and/or services punctually (clause 4 paragraph 1) then we may, after sending them a reminder and subject to an appropriate period of grace, withdraw from the contract and demand damages. Such damages may be either replacement of the damages suffered without proof of same being required or 10% of the agreed payment/s at our discretion. The client is entitled to render proof that we suffered no or much less damages.</p> <p>5. Reservation of Title</p> <p>5.1 We reserve title in the goods supplied and/or installed by us (goods sold subject to retention of title) pending payment in full of all claims due to us under the relevant contract/s and arising from the commercial relationship with the client now or in future and regardless of the legal reason to which we are entitled from the date of making contract or which have already been arisen.</p> <p>5.2 The client is entitled to resell, process, mix or combine as well as finally to sell the goods sold subject to retention of title provided this is done in the normal course of business as part of extended reservation of title. Hypothecation or assignment as security by the client of goods sold subject to reservation of title is not permitted. The client must advise us without delay in writing of any and all attachment/s or seizure/s of property of a judgement debtor by court authorities or other action/s by third parties affecting said goods.</p> <p>5.3 The client undertakes any and all processing or transforming of the goods sold subject to reservation of title solely on our behalf. We acquire co-ownership in any combination or mixture by the client with other goods not our property in the same ratio as that of the invoiced value of the goods sold subject to retention of title to that of the total value of the resultant new goods. Said resultant new goods are also considered goods sold subject to reservation of title within the meaning of these provisions.</p> <p>5.4 The client assigns all claims and rights associated with the sale together with all right/s to assert claims against their insurer to us in advance as security. In the event of the export of the goods and/or services the client also herewith assigns to us all their present and future right/s to assert claims in association with that export against domestic and/or foreign banks. This specifically includes the right to assert claim/s in association with collection orders, documentary credits or their confirmation, security and contracts of guarantee. Should the goods subject to reservation of title be sold by the client together with other goods not our property whether without or after processing then the right to</p> |
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	assert claim/s for an amount up to the invoiced value of the aforesaid goods is considered assigned to us. The aforementioned assignment includes no right on the client's part to defer their payment obligations.	7.2	Should acceptance and/or approval and/or departure from our works/warehouse be delayed for reasons for which the client can be held liable then the risk in the goods involved passes to the client when said goods have been separated out or selected and the client advised of their readiness for shipment.
5.5	The client remains authorised to collect the claim/s assigned to us even after such assignment. Our authority to collect same ourselves remains unaffected by this. We undertake, however, not to collect said claim/s as long as the client is not in arrears of payment to us, no application for the opening of bankruptcy proceedings against their assets has been made and they have not suspended payment/s. If any such case applies then the client must advise us without delay of the assigned claim/s and its/their debtor/s together with all the details necessary to collect the claim/s concerned and advise the debtor/s of said assignment.	7.3	Transport and shipment of goods and/or services are rendered at the client's expense and risk. The client is responsible for insuring any risks involved in such transport and/or shipment.
		8.	Defects
		8.1	The following applies to material defects.
		8.1.1	The client must complain of material defects to us without delay in writing.
5.6	Our client must keep said goods subject to retention of title in good order and condition, store them separately and label them as our property.	8.1.2	We are then initially to be given the opportunity to remedy matters within a suitable period of grace. Such remedy may consist of repairing the defect/s, supplying fault-free replacement/s or manufacturing new goods at our discretion.
5.7	If the client so requests we will assign our title in the goods subject to retention of title and the right/s to assert claim/s assigned to us back to the client to the extent their value exceeds that of the claim/s we can assert against the client by over 20%.	8.1.3	Should such attempt/s to remedy matters fail in the end, be unreasonable for either ourselves or the client, or be associated with unreasonable costs and/or effort then the client may withdraw from the contract or reduce the relevant price/s at their discretion without prejudice to their right/s to claim damages.
6.	Time Limits and Dates	8.1.4	Any client right/s to assert claim/s due to the cost/s and/or effort involved in remedying matters is/are excluded to the extent the cost/s increase/s because the subject matter of the goods and/or services rendered was later moved to some other site than that of the client's branch or subsidiary unless said movement complies with its/their envisaged use/s. This particularly applies to cost/s and/or effort devoted to transport, shipping and/or costs for labour and/or material/s
6.1	Time limits and dates are only binding on us if expressly agreed with the client in writing.	8.1.5	Should it be necessary to perform work at another site then the client must advise us of same in good time before such work is to begin, give us the opportunity to view the defect/s involved and observe our advice on limiting the cost/s.
6.2	Agreed delivery periods for goods and/or services begin on the date of our written acceptance declaration or confirmation.	8.1.6	The client's legal right of recourse against us is limited to the extent they have not made any agreement/s with their supplier/s going above and beyond the normal legal right/s to assert claim/s due to defect/s. The foregoing clause 8 paragraph 1 sub-paragraph 4 applies <i>mutatis mutandis</i> to the scope of the client's right of recourse.
6.3	<i>Force majeure</i> and other exceptional circumstances such as e.g. industrial disputes, machinery breakdowns, raw materials supply bottlenecks, jurisdictional measures and traffic disturbances entirely relieve us for the duration of their effects of our duty to render the goods and/or services as agreed. This applies regardless of whether such circumstances affect us and/or our suppliers provided they lead to impossibility of performance.	8.1.7	If any defect/s is/are complained of then the client may withhold payment/s provided their scope is reasonably related to the material defect/s involved. If any complaint/s of defect/s is/are unjustified then the client must recompense us for the cost/s thereby incurred.
6.4	Regardless of clause 6 paragraph 3 above the period of delivery and/or performance is extended as appropriate if client data we need to render/deliver the goods and/or services in question are lacking or not supplied in good time, if the goods and/or services to be rendered are amended later at the client's wish and/or if any other goods and/or services required of the client to properly render/deliver said goods and/or services are not made available by the latter or not made available in good time.	8.2	The following applies to defect/s of title
7.	Transition of Risk, Shipment, Transport and Insurance	8.2.1	Unless otherwise agreed we only have a duty to render the goods and/or services in the country of delivery free of any industrial property rights and/or copyright of third parties (hereinafter called industrial property rights). Should any third party rightfully assert any claim/s against the client for breach of industrial property rights due to any contractually utilised
7.1	The risk of accidental loss of, or deterioration in, any goods and/or services rendered by us passes to the client with their acceptance and/or approval but when said good/s leave our works/warehouse at the latest. This also applies to part-shipments and partial rendering of services even when we have assumed responsibility for other goods and/or services, (e.g. transport or shipment, etc.).		

	goods and/or services rendered by us then the following applies.		such net payment/s. This applies should any of the liability cases in clause 9 paragraph 1 obtain. Assertion of any further damages for delay is excluded except in the case of deliberate breach of contract.
	We will at our discretion either obtain utilisation right/s for the goods and/or services affected at our expense, amend/modify them so that they no longer breach the industrial property rights involved or replace them. If such remedy is impossible at reasonable expense and/or under reasonable conditions then the client is entitled to exercise their legal right/s to withdraw from the contract or reduce the price/s involved. This is without prejudice to their legal right/s to assert any claim/s for damages. Sub-paragraphs 8.1.2, 8.1.6 and 8.1.7 apply <i>mutatis mutandis</i> .	9.4	Clause 8 paragraph 5 applies <i>mutatis mutandis</i> .
		10.	Industrial Property Rights
			We reserve title and all industrial property rights, including copyright, in all our plans, drawings, calculations and other documents made accessible to the client. Said documents may not be otherwise utilised, and in particular not copied or made accessible to any third party, without our written permission. Said documents are to be returned to us without delay on demand.
8.2.2	Client right/s to assert any claim/s due to any breach of industrial property rights is/are excluded if they are liable for such breach, the breach was due to any client specification/s, was due to any use not foreseeable by us, or was caused by the goods and/or services as rendered being amended/modified by the client or used together with products not supplied by us.	11	Rights of Set-off / Retention / Refusal of Performance
8.3	Time Limitations and Damages for Defects	11.1	The client may only set off, exercise any right of retention or refuse performance either in whole or in part where undisputed claims or those that are <i>res judicata</i> or proven and ready for legal decision are concerned.
8.3.1	The time limit for defects in material/s and title is one year from the date the risk is transferred. This does not apply where the German Civil Code per § 438 paragraph 1 number 2 (Building Materials), § 479 paragraph 1 (Right of Recourse) and § 634 a paragraph 1 number 2 (Building Defects) prescribes longer limits, any defect/s was/were fraudulently not disclosed or any of the liability cases in clause 9 paragraph 1 obtains.	11.2	The foregoing exclusion of the right of withdrawal and/or of refusal of performance does not apply if, for our goods and/or services not rendered according to contract, we have already received that part/s of any payment/s that equals the value of our goods and/or services contractually rendered or if we ourselves in our relationship to our supplier/s have withheld any part/s of any payment/s due that equals the value of said goods and/or services not contractually rendered.
8.3.2	Our obligation to render damages is governed by clause 9 herein.		
8.4	Right to assert damages for defect/s in used goods	12.	Data Protection
	If used goods are supplied then any right/s to assert any claim/s for damages is/are excluded under paragraph 1 of clause 9 below.		We may electronically store client data as part of our commercial relationship and use and/or process said data as legally permitted for our commercial purposes.
8.5	The foregoing provision is not associated with any reversal of the burden of proof to the client's disadvantage.	13.	Place of Performance, Place of Jurisdiction, Applicable Legal Code and Partial Ineffectiveness
9.	Damages and Liability	13.1	Place of fulfilment for all goods and/or services and/or payments hereunder is Rostock, Germany.
9.1	The client's right/s to claim for damages and for costs incurred (hereinafter called the right to claim damages), regardless of its legal basis, is/are excluded. This applies except in cases to which the German Product Liability Act applies, of deliberate act/s of omission or commission, of gross negligence, of damage to life, limb or health, of assumption of any guarantee for any specific characteristic/s and/or of the breach of any major contractual duty.	13.2	Exclusive place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship hereunder is that court with jurisdiction at our head office location. This includes all disputes indirectly or directly arising from deeds, bills of exchange and/or cheques. However, we remain entitled to initiate legal proceedings against the client in the court/s having jurisdiction over their head office location.
9.2	Damages for breaching any major contractual duty are limited to those typical and foreseeable in this type of contract. This applies except in cases of deliberate act/s of omission or commission, gross negligence, damage to life, limb or health and of assumption of any guarantee for any specific characteristic/s.	13.3	The applicable legal code is that of the Federal Republic of Germany. The UN Convention on the International Sale of Goods is excluded.
9.3	Should we be late rendering any goods and/or services then the client may demand damages for each complete week of delay of 0.5% of the net payment/s due up to a maximum of 10% of	13.4	Should any provision in any contract for the rendering of goods and/or services of which these provisions are part be or become null and void this shall not affect the validity of the remainder.