

GENERAL CONDITIONS OF SALE AND TERMS OF DELIVERY



9/2017

I. General, Scope of Application

1. Our General Conditions of Sale and Terms of Delivery apply exclusively. We hereby repudiate any conditions of the customer contrary to or deviating from our conditions of sale, unless we have expressly confirmed their applicability in writing. Our General Conditions of Sale and Terms of Delivery apply even when we effect delivery without any reservation and in the knowledge of customer's conditions contrary to or deviating from our General Conditions of Sale and Terms of Delivery.
2. All agreements made between ourselves and the customer with a view to carrying out the contract shall be included in the contract in writing.
3. Our General Conditions of Sale and Terms of Delivery apply to merchants where the contract forms part of their business, and to legal persons subject to public law, as well as to entities governed by public law.

II. Offer, Documentation

1. Our offers are subject to change without notice. Orders and ancillary agreements require our written confirmation for their validity; this also applies to alterations and amendments to the contract, as well as to improvements and repairs carried out.
2. We reserve rights of ownership and copyright in illustrations, drawings, calculations and other documentation, as well as in presentations of technical processes recorded on different storage mediums; these must not be made available to third parties. This applies particularly to written documentation specified as „confidential“. The customer requires our explicit consent in writing prior to passing these to third parties.

III. Prices, Payment, Offsetting and Retention, Termination

1. Unless otherwise specified in the order confirmation our prices are „ex works“, exclusive of packaging; packaging will be charged separately as a lump sum. We reserve the right to increase prices where increases in costs occur subsequent to conclusion of contract, particularly as a result of tariff agreements or increase in costs of material. We shall provide the customer with evidence of such costs on request.
2. Our prices are exclusive of statutory value-added tax; this will be itemised separately on the invoice at the rate applicable on the day of delivery.
3. Up to two copies of technical documentation, such as operating manuals and data sheets, are available free of charge. Any additional copies will be invoiced separately.
4. Deduction of discounts can only be made where this has been agreed in writing.
5. Unless otherwise specified in the order confirmation, payment of the net price (without deduction) is due within 30 days from date of invoice. The customer is only entitled to set-off claims when these have been legally recognized, are not contested or have been accepted by us. Moreover, the customer is entitled to exercise the trader's right of retention, to the extent that his counterclaim is based on one and the same contractual relationship.
6. The customer has no right of termination in terms of § 649 BGB.

IV. Delivery Time

1. The term for delivery set by us commences at the earliest on posting the order confirmation, but not before production of any documentation, permits, or releases which the customer must supply, and not prior to receipt of down-payment, where agreed. The term for delivery is observed once the item has left the factory or its availability for shipment has been intimated within said period.
2. The term for delivery shall be extended by a reasonable period, in the case of labour disputes, particularly strikes and lockouts, and where unforeseen circumstances occur that are beyond our control, provided that such circumstances are shown to have significant bearing on the manufacture or delivery of the item ordered. The foregoing also applies when such circumstances occur at subcontractors' works. Nor are we liable in the circumstances described above, where these occur at a time where delivery is already delayed. We will intimate the beginning and the end of such obstacles to the customer as soon as possible.
3. Should delivery be delayed for reasons for which we are responsible, the customer may claim liquidated damages for the delayed part of the delivery where agreed.
4. Should the customer, subsequent to any delay in delivery occurring, grant a reasonable extension of time together with notice of repudiation of the contract, he is then entitled to withdraw from the contract, after expiry of this additional period; the customer is only entitled to claim damages for non-performance for the amount foreseeable, where delay in performance was caused with intent or caused by gross negligence. In all other cases, compensation for damages is limited to 50% of the damage caused.
5. Limitation of liability in terms of para. 3 and para. 4 does not apply where a commercial agreement for a fixed-date delivery has been concluded. The same applies when the customer can claim loss of interest in fulfilment of the contract because of the delayed delivery for which we are responsible.
6. Fulfilment of our obligation to deliver is conditional on the customer duly meeting his obligations in time.

7. Where the customer is in default of acceptance of delivery or infringes duties of cooperation, we are entitled to claim compensation for damage caused, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the purchased article passes to the customer for the time during which he is in default.
8. Where delivery is delayed at the customer's choice, costs of storage will be invoiced /charged to customer from the month following notice of readiness to deliver. GESTRA is however authorized, after expiry of a reasonable time limit set, to dispose otherwise of the delivery and to deliver to customer subject to an extended delivery time.

V. Shipment and Passing of Risk

1. Unless specified otherwise in the order confirmation, it is agreed that delivery is „ex works“. Where delivery is made ex commission agency or distribution warehouse, corresponding original freight will be charged.
2. We are entitled to execute partial deliveries.
3. Packaging is charged at cost and can only be returned to us at customer's expense.
4. We will supply material and weight specifications for deliveries to foreign countries on request. We do not assume any responsibility for compliance with foreign packaging and customs regulations etc.
5. We recommend that shipments be insured against breakage. Should we receive no instructions to the contrary, we shall have the goods insured in the customer's interest (in the case of delivery to a foreign country, up to the German border). These costs will be invoiced at of 1/2 % of the value of the goods. Where deliveries are defective, the bill of freight must be sent to us, together with the official certificate of the carrier. At the same time, the following must be noted on the bill of freight: „We assign all rights under this bill of freight to the supplier.“; place, date, company stamp and authorized signature.

VI. Liability for Defects

1. Warranty rights of the customer are conditional on his complying with his duty to inspect the goods and notify any defects. Each delivery shall be examined without delay for defects. Any defects shall be reported by registered letter or fax without delay, but at least within a week from receipt of the goods. Defects that could not be detected within this period, even on careful examination, shall be reported by registered letter or fax without delay, as soon as they become evident.
2. Should a defect, for which we are liable, exist in an item supplied by us from our standard programme, the customer can, at his own choice, demand replacement delivery or elimination of defects. In the latter case, we assume only the cost of the replacement part, including transport, as long as the expenses are not increased by delivery elsewhere than the original place of delivery. Replaced parts become our property. The customer must ship them to us at his own expense. The customer must return the parts free of any contaminating substances.
3. Where a defect, for which we are responsible, exists in one of our items supplied that has been specially manufactured according to customer specifications, e.g. in the range of systems and control engineering, we are entitled, at our option, to eliminate the defect or replace the defective item. In the case of eliminating the defect, we are obliged to assume all necessary expenses incurred in doing so, and, in particular, expenses for transport, travel costs, work and material, as long as the expenses are not increased by delivery elsewhere than the original place of delivery. We are fully released from liability for defects under the warranty if the customer does not give us the opportunity to eliminate the defects within a fair and reasonable time.
4. For an item supplied but not manufactured by us, our liability is limited to assignment of the liability claims to which we are entitled against the supplier of such products. We are liable only when, after recourse to the courts, it has been proven by the customer that the supplier is insolvent. In this case, we shall reimburse the customer for any additional costs of the proceedings that have not been recovered against the supplier.
5. Should we not be prepared to or are not in a position to eliminate defect / supply replacement for a supplied item, and should in particular, the period exceed a fair and reasonable time limit by virtue of circumstances for which we are not responsible or should, in any way, elimination of defect / replacement supplied be unsuccessful, the customer is then, at his own choice, entitled to withdraw from the contract or to reduce the price accordingly, or to eliminate the defect himself. In the latter case, the customer is only entitled to eliminate the defect in urgent cases of operational safety, of which we must be advised immediately.
6. Unless otherwise specified below, all further claims of the customer, in particular for damages, are excluded, regardless of their legal basis. This also applies in relation to claims of the customer regarding a seal replacement or change of seal, where we did not carry out the installation. In addition, no liability exists for any damage occurring as a result of alterations or repairs to items we supplied, carried out without our prior approval by either the customer or a third party. Finally, we are not liable for damage other than to the item supplied itself, nor for lost profit or other economic loss of the customer.
7. The foregoing exclusion of liability is inapplicable where the damage was caused with intent or gross negligence on our part. Furthermore, it does not apply in the case of fraudulent concealment of a defect or where a guarantee was provided as to the condition or quality of the goods.

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9/2017



- Should we negligently fail to comply with our contractual obligations, our liability to compensate for damage to property is limited to the indemnification under our product liability insurance. We are prepared to submit a confirmation of insurance cover to the customer on request.
- The warranty period is 12 months, starting from the passing of risk. This is a limitation period. Should elimination of defects become necessary, the time period is extended for the duration of such work.

VII. Liability

Claims of the customer for compensation in damages - without regard to the legal nature of the claim made - are expressly excluded. Damages for loss of life, injury to person or health and other damages resulting from a breach of duty caused by intent or gross negligence are not subject to this exclusion, where we are responsible for breach of duty, nor are other damages that result from intentional or grossly negligent breach of duty. A breach of duty by our legal representatives and vicarious agents is deemed to be a breach of duty by ourselves. Where we are responsible for the breach of duty, the customer is entitled to rescind the purchase contract, provided there are no defects in the purchased goods. Where our liability is excluded or limited, such limitation also applies to the personal liability of our employees, employers, staff members, agencies, sales representatives and vicarious agents.

VIII. Retention of Title

- All items supplied by us, including items to be supplied, remain our property until settlement of all claims, including such as may arise in the future. Where current accounts exist with the customer, retention of title relates to the balance of accounts as recognized. Where we agree to payment by the customer by cheque and bill transactions, retention of title extends until full redemption by the customer of the bill we accepted, which is not honoured by crediting it to account. Where the customer does not comply with the terms of the contract, and is, in particular, in default of payment, we are entitled to reclaim the goods we supplied covered by retention of title. Reclaiming goods shall not be deemed a rescission of contract unless we have explicitly confirmed this in writing. Where we seize the goods subject to retention of title, this will constitute rescission of contract. We are authorized to sell the goods covered by retention of title, after re-assuming possession. The proceeds of sale shall be credited to the liabilities of the customer - after deduction of reasonable costs in realizing such sales.
- The customer is obliged to treat the goods covered by retention of title with care. He is, in particular, obliged, at his own expense, to provide sufficient insurance coverage for these goods at original value against fire, water and theft. Where maintenance and inspection work is necessary, the customer must have this work performed in time and at his own expense.
- In the case of seizure or other intervention by third parties, the customer must inform us immediately in writing so that we can take legal action. Where the third party is unable to reimburse us for legal costs arising in or out of court, the customer is liable for any losses we incur as a result.
- The customer is entitled to resell the goods subject to retention of title in ordinary course of business; however, he assigns to us with effect from now all claims up to the amount of the final invoice sum (including VAT) falling due to him by his purchaser or third party from the resale, irrespective of whether the goods under retention of title that are resold, and have or have not been processed. The customer remains entitled to recover the claims arising from such sales, despite assignment. This does not affect our right to collect the debt, which remains unaffected. We undertake, however, not to collect the claims ourselves, on condition that the customer fulfils his duty of payment out of the proceeds of the sales, does not fall into delay in payment, and in particular, that no bankruptcy or insolvency proceedings have been initiated, or payment terminated. In the latter case, we can demand that the customer informs us about the claims assigned and names of debtors, provides us with all information needed to enforce such claims, makes all necessary documents available to us and intimates the assignment to the debtors (third parties). The customer is not entitled to otherwise dispose of the goods subject to retention of title. This applies particularly to transfer by way of security, to pledging of the goods, as well as to the conditional assignment of claims of the customer arising from resale of the goods subject to retention of title.
- Any processing or modification of the goods under retention of title by the customer is always performed on our behalf. Should the goods under retention of title be processed with other items not belonging to us, we acquire joint ownership to the new item in proportion to the value of the goods subject to retention of title to that of the other mixed items at the time of processing. The same applies to the item resulting from processing as to the goods supplied subject to retention of title.
- Should the goods subject to retention of title be inseparably mixed with other goods not belonging to us, we acquire joint ownership in the new item in proportion to the value of the goods under retention of title to the other mixed items at the time of confusion. Should the intermixture of goods be effected in such a way that the item of the customer is regarded as the main item, then it is agreed that the customer transfers joint ownership in proportion to us. The customer holds the resulting right to sole ownership or joint ownership on our behalf.
- The customer assigns to us his claims against third parties in security for our claims against him that arise from the confusion of the goods subject to retention of title with property in land.

- We are obliged to release securities in our favour at the request of the customer where the value of our securities exceeds 20% of the debts to be covered by said securities; the choice of securities to be released is incumbent on us.

IX. Return of Goods

The return of goods due to errors in order placement, for which the customer is responsible, is only permitted for goods having a net value of over Euro 500 and with our written consent. In addition, return of goods is only possible, when the delivery item is fungible, is in its original packaging and invoicing was no longer than 6 months prior to date of return. The customer shall be credited with 70% of the good's net value after their arrival, provided that delivery has taken place freight free. Goods specially manufactured at the request of the customer are excluded from this provision. Goods returned at the order and for the expense of the customer will only be accepted if completely decontaminated.

X. Data collection

Gestra collects and processes customer data where necessary in the business and permissible in terms of Federal Data Protection Code (§26 BDSG).

XI. Place of Jurisdiction, Place of Fulfilment

- Where the customer is a full merchant, the place of jurisdiction is our place of business. We have, however, the right to instigate legal proceedings against the customer at his place of residence.
- Unless specified otherwise in the order confirmation, our place of business is the place of fulfilment.
- The relationship between GESTRA and customer is governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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