

General Terms and Conditions of Business

Both parties mutually agree that the following terms and conditions of business form the contractual component. They have precedence over purchasing – or similar conditions of the customer. Deviations, amendments and assurances must be undertaken in writing to be valid.

1. General Provisions for Services, Repairs and Sales

§ 1 Tender / Tender documents

1. If the order is to be qualified as a tender pursuant to § 145 BGB (Bundesgesetzbuch) << Federal code of law >>, then we can accept this within 4 weeks.
2. Our tender is subject to changes, insofar as nothing otherwise arises from the confirmation of order.
3. We reserve all ownership rights and copyrights on illustrations, designs, calculations and other documents. This also applies to such documents, which are characterised as "confidential". Before passing on to third parties the customer requires our explicit written approval.

§ Delivery times/ Deadlines

1. The commencing of the time stated by us presupposes the clarification of all technical questions.
2. The compliance of our delivery obligation furthermore requires the punctual and orderly fulfilment of the obligation of the customer. We reserve the right to an objection based on a non-fulfilled contract.
3. If the customer defaults in the acceptance or inspection of the delivery of the goods or he violates other duties of cooperation, then we are authorised to set him an appropriate period of grace of 14 days with the declaration that we will reject the service after the lapse of the deadline. If the deadline passes without success we are entitled to withdraw from the contract or to claim compensation because of non-fulfilment. If we claim compensation for damage, in the case of the delivery of goods this will amount to 20% of the purchase price, with custom-built machinery and building work 40% of the agreed works rate.
4. Provided that the prerequisites of paragraph 3 are dealt with, the risk of an inadvertent ruin or an accidental deterioration of the product passes to the customer at that point of time, when he gets in acceptance or debtor default.
5. We are liable in accordance with the statutory regulations, insofar as a contract where time is of the essence is based on clauses from § 361 BGB (Bundesgesetzbuch) << Federal code of law >> or § 376 HGB (Handelsgesetzbuch) << Commercial code of law >>. We are also liable if the supplier or service default is attributable to a deliberate or grossly negligent contractual infringement supported by us. As for the rest our liability is restricted to the foreseeable, typically occurring damages.

§ 3 Prices / Conditions of Payment

1. Provided that nothing otherwise arises from the confirmation of order, in the case of deliveries our prices apply ex works, excluding packaging, this is charged separately to the account. We reserve the right to change our prices accordingly, if after the conclusion of the contract cost reductions or – increases, arise e.g. on the basis of collective wage agreements or material price increases. These are verified on request.
2. The statutory VAT is not included in our prices, unless it is shown separately.
3. The discount deduction requires specific, written agreement.
4. All invoices are to be paid immediately in one sum after invoicing. We are entitled to demand overdue interest to the amount of 5% above the base interest rate of the discount rate.
5. The customer is only entitled to claims to offset, if his counterclaims are uncontested, recognised by us or are ascertained to be legally valid.
6. With orders, whose implementation lasts longer than a month, we can demand from the customer payments on account, depending on the progress of the construction work, to the amount of 90% of the respective value. These are due immediately.

§ 4 Competency of court/ Place of performance / General information

1. Insofar as the customer is a full trader, the competency of court for both parties from the business dealings is Nuremberg, Bavaria. The same competency of court applies, if the customer has his place of business abroad. We are also entitled to bring an action against the customer at his local court.
2. Provided that nothing otherwise arises from our confirmation of order, our place of business is the place of performance.
3. Through any invalidity of one or several provisions the validity of the rest of the provisions is not affected.

II. Sales conditions

§ 1 Passing of risk / Packaging costs

1. Provided that nothing otherwise has been agreed, the delivery is applicable "ex works". We do not take back packaging material.
2. Upon the request of the customer we will cover the delivery with transport insurance at their cost.
3. In the case of the delivery of switch cabinets it is incumbent on the customer to inspect the screw connections upon receipt and if necessary to retighten the loosened screws.
4. The customer has to make sure that the switchgears delivered by us are not exposed to an ambient temperature higher than 20°C during operation.

§ 2 Defect warranty

1. The warranty rights of the customer require that this is performed according to his duties of examination and reproach owed pursuant to §§377,378 HGB (Handelsgesetzbuch) << Commercial code of law >>. A notification of a defect has to be undertaken at the latest 10 working days after the delivery and in writing.
2. In the case of a legitimate defect the customer can only initially demand the removal of the defect or a replacement delivery, by which we reserve the right of selection. In the case of the removal of the defect we will undertake to bear all necessary expenses for the purposes of the removal of the defect, insofar as these do not increase as a result, by taking the item to another site other than the place of performance. In this case the expenses are restricted to the amount of the purchase price. The customer must set us an appropriate period of grace of 10 working days for the removal of the defect. If he fails to do this, he cannot demand from us reimbursement for his own costs incurred during the removal of the defect.
3. If the removal of the defect or replacement delivery is a failure, then the customer is entitled to demand the rescission of the contract for work and sale or a reduction of the price. Insofar as the item lacks a warranted attribute, we are liable for compensation in accordance with the statutory regulations because of non-fulfilment of the contract, so long as the purpose of the respective warranty actually extends to the contractual conformity of the underlying delivery, but not however to the risk of consequential harm caused by defects.
4. We are liable according to the law, provided that the customer enforces claims to compensation, which refer to criminal intent and gross negligence including that of our agents or persons employed by us in the performance of our obligations. Insofar as no deliberately criminal conduct can be blamed, the liability to pay compensation is restricted to the foreseeable, typically occurring damages. date 10/2002.

5. We are liable according to the statutory regulations, insofar as we culpably violate a fundamental contractual duty; in this case the liability is restricted however to the foreseeable, typically occurring damages.
6. As for the rest the liability to damages is excluded; consequently we are not liable for damages, which have arisen not on the object of delivery. The provisions of the product liability act remain unaffected.
7. In the case of the delivery of switchgears we do not assume any liability for damages and consequential damages, if the defect is attributable to harmonic waves in the power supply network. The liability for damages incurred as a result of this is excluded by us.
8. The warranty period amounts to 6 months from the passing of risk. The statutory period of limitation applies also to claims for compensation of consequential damages, provided that no claims have been expressly enforced.

§ 3 Total liability

1. A more far-reaching liability for compensation as in § 2 is excluded, especially as a consequence of blame at contract conclusion, positive violation of the requirements and because of unlawful claims.
2. Claims for compensation due to the impossibility or incapacity remain unaffected, likewise claims from the product liability act, insofar as its provisions are mandatory.
3. The restrictions and exclusions of liability also apply for the benefit of our employees, agents and persons employed by us in the performance of our obligations.

§ 4 Safeguarding the reservation of ownership

1. We reserve the right to the ownership of the goods up to the receipt of all payments from the supply contract. In the case of conduct by the customer contrary to the terms of the agreement, in particular with a default in payment, we are authorised to take back the goods; there is no withdrawal from the contract because of this. In the distraint of property there is always a withdrawal. After taking back the goods we are entitled to use them, the proceeds are to be taken into account minus the costs of their utilisation to the liability.
2. The customer has to handle the goods with care.
3. In the case of distraints of property or other interventions by third parties, the customer must notify us immediately in writing, so that we can file a suit in accordance with §771 ZPO (Zivilprozessordnung) <<Judicial code >>. The customer is liable along with the third party for the costs of the legal proceedings.
4. Up to payment the customer is not entitled to sell on the goods or to relinquish these to a third party. Likewise the transferances of security or pledging are prohibited. If the customer is the re-seller, then the re-sale in the conventional business process is permitted to him with the prerequisite that he cedes the claims from this towards third parties including all subsidiary rights to us.
5. The processing or reshaping of the products by the customer is always undertaken for us. If the goods are processed with other items, then we acquire joint ownership of the new item in a proportionate ratio to its value. As for the rest for a new item the same applies as for the item delivered under the proviso. In the case of an inseparable merging with other items this applies as above in the same way. If the merging is undertaken in the manner that the product of the customer is to be regarded as the main item, then it is considered agreed that the customer assigns joint ownership proportionately to us, which he keeps in this form for us.
6. The customer cedes the claims to the safeguarding of our claim against him to us, which arise through the linking of the product e.g. in the case of switchgears with a property against a third party.
7. We undertake to release the securities to which we are entitled upon request of the customer insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the security is undertaken by us.

III. Conditions of Service and Repair

§ 1 General information

Insofar as the subsequent conditions do not contain any regulations, in the case of the work on the building the Verdingungsordnung für Bauleistungen (VOB) << Contracting regulations for award of public work contracts >> part B and the DIN standards apply.

§ 2 Deadlines

The agreed completion deadline is only then binding, if the compliance is not made impossible through circumstances, which we do not have to justify. The customer then only has claims from § 8 No. 3 VOB, Verdingungsordnung für Bauleistungen (VOB) << Contracting regulations for award of public work contracts >> if a period was agreed in writing according to the calendar for commencing and completion and the customer has set an appropriate period of grace with the threat of rejection.

§ 3 Warranty

1. The warranty period amounts to 12 months for all work services as well as for installed material. For building services this amounts to 2 years.
2. For the removal of defects the customer has to set an appropriate time limit.
3. From any warranty are excluded damages as a result of higher impact, among others also fluctuations in the power supply network or any harmonic waves occurring in the network, which no longer move in the tolerance range.
4. The customer must report obvious flaws in services immediately, at the latest 5 working days after the acceptance inspection; otherwise we are exempt from the defect liability.
5. We are liable for damages and losses on the works object, insofar as we or persons employed by us in the performance of our obligations are responsible for the fault. In the case of damage we are obligated to the corrective maintenance, unless this is impossible or possible only with excessive expenditure. In this case the replacement value is to be reimbursed. The same applies in the case of loss. Claims which surpass this, in particular claims to compensation are excluded except in the case of criminal intent and gross negligence. This also applies in the case of claims of blame in contractual negotiations and positive infringement of the requirements.

6. A claim to the warranty only exists, if all the plant machinery supplied by us is maintained by the customer according to the relevant VBG4 guidelines and additional according our operating instructions (FB 7/32/1/08.02). The implementation of this maintenance work is to be verified by the means of suitable protocols by the customer.

§ 4 Right of lien

Because of our claim from the order we are entitled to a right of lien on the customer's items, which got in our possession in connection with the order. We can extend this right of lien to other claims against the customer, provided that the claims stand in relation to the item or the claims are uncontested or are deemed to be legally valid. If the collateral item is not collected within 4 weeks of the demand, warehouse charges will accrue. We are entitled to sell the collateral item and to use the proceeds for our own requirements, if the customer does not collect the item after further 3 months and despite the threat of selling with a further one-month time limit.

§ 5 Reservation of ownership

We reserve the right of ownership on the items supplied and installed by us until complete payment is rendered. If there is a default in payment, we can demand the removal of our items from the premises of the customer, to regain possession of them.