

GENERAL TERMS AND CONDITIONS(GT&C)

1. The GT&C apply to all our contracts and they prevail any other GT&C. Oral orders require a written confirmation by Customer.
2. Any estimate of costs is not binding if not otherwise confirmed in writing. If they do not lead to an order, they will be invoiced at our applicable list prices.
3. Partial shipment is permitted and shall be deemed to be subject of a separate contract so that failure/defects in such shipment shall not entitle Customer to repudiate the whole contract. Date of bill of lading is evidence of the shipment date. If the goods are to be delivered FAS, FOB sea port/airport, we will decide on the vessel/aircraft. If stowing etc. of the goods on board is our obligation, this shall not affect the passing of risk of loss of, or damage to the goods. Any delivery dates quoted are approx. only and we are not liable for any delay in delivery, unless time was of the essence or we have delayed delivery intentionally, by gross negligence or under violation of main contractual obligations. Delivery time shall only be of the essence if agreed in writing. If any license necessary for delivery cannot be obtained from a competent government, the contract shall be void.
4. Property shall not pass to Customer until all amounts outstanding from Customer under any contract have been fully paid. Until property has passed to Customer, Customer shall have possession of the goods as our fiduciary agent only and shall maintain the goods separately from other property, properly stored, protected, insured and identified as our property; we are permitted to inspect the goods at any time and may repossess the same if Customer is in delay with any payment. Customer may sell the goods in the ordinary course of its business but shall not otherwise dispose of nor allow any encumbrance on the same. Customer herewith assigns to us for security purposes all of its receivables emanating from its sale of goods, provided that (i) Customer shall remain entitled to collect such assigned receivables until our revocation and that (ii) we may disclose this assignment to his customers at any time. We herewith accept this assignment. If the fair market value of our security exceeds the amounts assigned by Customer by 20% or more, we will release the excess security upon his request. In any event, risk in the goods shall pass to Customer either as provided by applicable Incoterms or otherwise upon delivery of the goods to Customer, carrier or other agent, whichever occurs first.
5. If payment shall be made by LC, Customer shall establish an irrevocable confirmed LC negotiable by sight draft through an international prime bank immediately after contract date with a validity until at least 20 days after the last day of the respective delivery. Such LC shall meet international standards, shall expressly permit part shipment and shall authorize reimbursement to us for sums as may be advanced for consular invoices, inspection fees and other costs for the account of Customer. Should payment under such LC not be duly made, Customer shall, upon our notice, immediately pay in cash directly and unconditionally together with interest from due date under the LC until final payment. All bank charges outside Germany, including collection charges and stamp duties shall be for the account of Customer as well as confirming commissions wherever charged. Customer shall pay all taxes, duties and other fiscal dues related to the purchase of the goods or rendering of the services including VAT and customs duties. All payments shall be made free and clear from any deduction and set-off, unless recognized by us or adjudicated in a final court judgement. Due date under the contract and/or for opening of an LC shall be of the essence. If we agree to customer credit, we may in case of reasonable doubts in the creditability of Customer limit or cancel the credit and may likewise require payment in cash in advance or may require guarantees or other security to be provided and this so required shall be provided for by Customer promptly upon such request. If payment is delayed, Customer shall pay interest from the due date until payment acc. to § 288 II/III German Civil Code.
6. If the contract is on a CIF or CIP basis, 110% of the contract price shall be insured by us, unless otherwise agreed in writing.
7. If, after contract date, there is any increase in freight rates, surcharges, taxes, customs duties, export/import surcharges or other official charges or insurance premiums which are payable by us or if any new or additional charges are imposed on us with respect to the goods or services, then such additional or increased amounts shall be promptly reimbursed to us by Customer.
8. Our warranty shall be refined to subsequent cure by replacement, new performance or, at our option, repair at our expense. Only if these remedies should finally fail, may Customer, at its option, reduce the contract price or rescind the contract. We shall be under no liability whatsoever howsoever arising unless in case of intent, gross negligence or the violation of main contractual obligations in which event Customer, upon first granting a reasonable grace period for the remedy of our default, may rescind the contract or claim compensation of its direct damages only. We shall not be liable to Customer for incidental, indirect, consequential or special loss or damage.
9. Customer shall inspect goods immediately upon arrival. Customer shall notify us in writing of any defects, shortfall or deviation of the goods or services within 14 days after arrival or performance or in the event of hidden defects within 7 days after the discovery. Customer's claims shall contain full particulars of the claim and shall, where appropriate, be accompanied by evidence certified by an authorized surveyor. The statute of limitations for warranties shall be 1 year upon arrival/performance except for consumables for which the warranty period is limited to their lesser average life time.
10. We will carry through services carefully during our normal working hours. Transportation costs are to the burden of Customer. Our invoices will be based on the service reports to be signed by Customer at site of the respective reports of our repair shop. Parts, material and travel/overnight expenses will be invoiced on the basis of our actual price list. Parts and units suitable for repair will be invoiced at the respective exchange price while other parts and units will be exchanged at the full normal price. Replaced parts and units become our property. Invoices are due and payable at least 30 days after invoice date without deduction.
11. Services are subject to acceptance by Customer in written form. We can request partial acceptance of demarcatable and economically independent parts of the services. In such a case, the last partial acceptance is deemed to be the final acceptance which may not be withheld without reason or in case of insignificant defects only. As soon as the contractual services or part of the same have been finalized, we will present to Customer the respective service report or acceptance record respectively. Customer undertakes to immediately, however, 1 week after receipt of the document at the latest, declare the acceptance which may not be withheld in case of insignificant defects only. Such deviations, if any, will be recorded in the acceptance record and will be removed in the scope of warranty. If the acceptance shows significant deviations, Customer may refuse acceptance and may fix a reasonable time limit to recover the contractual performance after which a new acceptance will take place. The acceptance is deemed to have been declared if Customer does not declare the same even after expiry of a reasonable grace period or refuses it without sufficient grounds.
12. We shall not be responsible for any alleged infringement of any intellectual property right related to the goods or services unless in case of intent, gross negligence or violation of main contractual obligations. In such events, we shall exert our best efforts to obtain permission to use the rights from their owner or shall permit Customer to rescind the contract. Sec 8. last sentence applies mutatis mutandis. Nothing herein contained shall be construed as transferring any intellectual property right in the merchandise.
13. If our contractual obligations are prevented by force majeure, affecting our activities or any other party connected with the fulfilment of such obligations, including, but not limited to, act of God, flood, typhoon, earthquake, tidal wave, landslide, fire, plague, epidemic, quarantine, dispute, sabotage, explosion, accident or breakdown in whole or in part of machinery, plant, transportation or loading facility, governmental request, guidance, order of regulation, unavailability of transportation or loading facilities due to such acts of God, curtailment, shortage or failure in the supply of fuel, water, electric current, or other public utility or raw material, by cutting, substantial change of the present international monetary system or any other cause whatsoever not under our reasonable control, then we shall not be liable for loss or damage or failure or delay in performing our obligations under the contract and may, at our option, reasonably extend the time of shipment or rendering the services or cancel the unfulfilled portion of the contract to the extent so affected.
14. If Customer commits any breach of its contractual obligations or becomes bankrupt or has a receiving order or administration order made against him or enters into composition with its creditors or becomes subject to a sequestration or if Customer's firm is dissolved or, Customer being an incorporated body, if a resolution of dissolution is passed (other than for reconstruction or amalgamation) or a resolution to split Customer's corporate entity into several entities or if Customer is insolvent or unable to meet its commitments promptly or if any other event occurs which gives reasonable grounds for believing that Customer's ability to perform his contractual obligations may be impaired, then and in any such event or the equivalent thereof at Customer's domicile, we may (without prejudice to any other right we might have): (i) forthwith terminate the contract in whole or in part by notice in writing after giving Customer an opportunity to remedy its default, unless the final receiver in bankruptcy should choose to fulfil the contract and/or (ii) suspend further performances and/or (iii) forthwith demand immediate payment of the contract price and all other sums which may be outstanding to us and/or (iv) demand security by bank guarantee or otherwise for payment of the contract price and/or (v) repossess any of the goods held by Customer in which property has not yet passed.
15. Customer shall execute such further assurances, instruments or documents and do or cause to be done any such other acts as may be necessary under applicable laws to insure that property in, and legal and beneficial ownership of the goods passes to Customer only in accordance with the contractual provisions.
16. Customer shall not resell the merchandise to any other country outside the EU than the destined country without our written consent. Customer shall not export, re-export, transship or make available any products, including software, parts, technical information/data and documents to any third parties outside Customer's country in violation of any applicable export control laws, rules and regulations of the competent government.
17. The customer shall assume the disposal of the packaging supplied and shall ensure that the packaging is properly disposed of in accordance with the legal requirements, in particular the Packaging Act.
18. According to § 10 (2) German ElektroG and similar WEEE laws in other EU Member States, Customer is obliged to take care of the disposal of electronic waste. Customer may return the same to us whereby the entire disposal costs have to be born by Customer.
19. The GT&C shall be governed by and construed in acc. with the laws of Germany. The UN Convention on the International Sales of Goods (CISG) shall not apply. Customer submits to the exclusive jurisdiction of the Düsseldorf courts but we may institute proceedings in the courts of any other competent jurisdiction.
20. Failure or delay to enforce any of our rights shall not be construed as a waiver of such rights. If we waive any of our rights in relation to the breach of Customer's obligations, such waiver (which must be in writing) shall not relate to any other breach.
21. If any provision of the GT&C is held by any competent authority to be invalid or unenforceable, the validity of the other provisions and the remainder of the condition in question shall not be affected.