

GENERAL CONDITIONS OF SALE AND DELIVERY

I. Offer

1. Offers are not a binding contract for either a work order or to deliver products or services. We are only obliged to deliver when the order has been confirmed in writing. Delivery is subject to all rights reserved. Data pertaining to the offer such as illustrations, drawings, weight and measurements are only approximate unless expressly described as binding. The supplier reserves the right to carry out any alterations he considers as necessary. The supplier retains ownership and copyright of cost estimates, drawings and other documents; these must not be made accessible to third parties, without the supplier's permission. The supplier is obligated not to make plans available to third parties that are described by the buyer as confidential, unless it is done with the buyer's approval.

II. Commitment of delivery

1. The supplier's written confirmation of the order authorizes the commitment of delivery. Other agreements and changes require the supplier's written consent.

III. Price and payment

1. We reserve the right to adjust the prices should costs change prior to delivery. All packaging will be charged to the buyer and is non-refundable.
2. Bills for repairs, assembly, tools, development costs and models are immediately payable net. The buyer is not entitled to withhold payments or to adjust them against any counterclaims. If payment is overdue, we reserve the right to charge accumulated interest of four percent (4%) above LIBOR six (6) months rate prevailing in the country of origin.

IV. Delivery time

1. The terms of delivery mentioned in our offer are not binding.
2. Time of delivery begins with the date of issue of our order confirmation. After all terms have been discussed and both parties have agreed upon all conditions of the transaction and as it relates to completion of the offered work. Its observance assumes the fulfillment of the buyer's contractual obligations. Particularly the agreed upon conditions of payment. Unforeseen events, beyond the supplier's control (such events include but are not limited to force majeure, natural disasters, fire, flood, explosions or earthquakes, temporary factory shut down, strike, lockout, delayed or faulty delivery of the necessary raw materials, semi finished or finished goods, rejects - at the supplier's own works or that of the subcontractor) will extend the term of delivery within reason, and even if they take place during delayed shipment. The same applies if an official or other authorization by third parties necessary for the execution of the order are not promptly received, as well as in the case of subsequent order amendments.
3. Partial deliveries are permitted.
4. If the shipment is delayed due to buyer's request, he will be charged beginning one (1) month after delivery was said to be ready for shipment, with expenses accrued in storage. In case of storage in the supplier's works at least zero point five percent (0.5%) of the invoiced amount for each month.
5. Compliance with the term of delivery assumes the fulfillment of the buyer's contractual obligations.

V. Transfer of Use and Risk

1. The right to use the goods and the risk involved is being passed on to the buyer with the shipment EXW even if prepaid freight delivery was agreed upon. If the shipment is held up due to the buyer's fault, the risk passes to the buyer from the date of readiness to deliver.
2. Insurance against damage in transit is taken out at the buyer's request and expense.

VI. Reservation of proprietary rights

1. The supplier retains ownership of delivery until all payments have been received as agreed upon in the delivery contract.
2. The buyer may neither pawn nor mortgage off the object of delivery. In the event of confiscation by third parties, the buyer must immediately contact the supplier.
3. Validity of reservation of proprietary rights and distraint order of the delivery by the supplier is not equivalent to a withdrawal from the contract.

VII. Testing and inspection of the delivery

1. Provided as standard practice, the supplier tests the goods during production; a functional test will be performed prior to shipment of the goods and an acceptance protocol will be issued. Should the buyer request additional tests, they need to be stated in writing and paid for by the buyer, unless stated otherwise.
2. The buyer must check the shipment within a reasonable period of time and immediately notify the supplier in writing of any defects. If he neglects to do so, the shipment is regarded as accepted.

3. If the buyer requests acceptance tests, they must be stated in writing. The buyer will duly sign the acceptance test certificate, presented by the seller, without delay. If the acceptance tests cannot be carried out within a set period of time for reasons for which the supplier is not responsible, the qualities to be checked in these tests shall be regarded as being in existence and at acceptable levels.
4. Should the consignment upon acceptance not be in accordance with the contract, the buyer must give the supplier the opportunity at his earliest convenience, to correct the defects.
5. Any further claims by the buyer on account of faulty delivery, especially for damage compensation and cancellation of the contract, are excluded.

VIII. Guarantee

The supplier is liable for deficiencies in delivery, including the lack of guaranteed attributes to the exclusion of further claims as follows:

1. All affected parts must be exchanged free of charge at the supplier's discretion or to his best judgment be repaired or replaced. Particular those parts that become unusable or whose usability is considerably reduced within six (6) months after acceptance at the supplier's works, which could be attributed to circumstances occurring prior to the transfer. Including those defective parts, that fail because of faulty design, poor construction materials or faulty construction. The discovery of such deficiencies must be reported to the supplier in writing without delay. Replaced parts become the supplier's property. If the shipment, assembly or acceptance is delayed without fault on the supplier's part, the supplier's liability will be invalid at the latest eight (8) Months after delivery or after announcement of readiness to deliver. The supplier's liability for external products is limited to the transfer of the liability claims he receives against the third party supplier of the external product.
2. The buyer's right to demand any claims for defects falls under the statute of limitation in all cases after six (6) months from the date the claim is made, but at the earliest after the guarantee has expired.
3. No guarantee is assumed for damages arising for the following reasons: unsuitable or incorrect use, faulty assembly or operation by the buyer or third party, improper maintenance, failure to observe the operating instructions stipulated in suppliers technical specification-, maintenance- and operational manual, natural wear, faulty or negligent handling (especially excessive stress), the use of unsuitable materials, replacements, defective construction, unsuitable foundations, chemical, electrochemical or electrical influences, provided they are not due to fault or negligence on the part of the supplier.
4. For making all improvements and replacements that seem necessary in the supplier's sound judgment the buyer must consult the supplier and grant the necessary time and opportunity, otherwise the supplier is released from the liability for deficiency.
5. Of the expenses directly connected with the improvement or replacement, the supplier bears - provided the complaint proves to be justified - the costs of the replacement part(s) including dispatch and the appropriate costs of dismantling and assembly. Further if this can be reasonably requested according to the circumstances, the costs of the necessary mechanics and assistants. Otherwise expenses are borne by the buyer.
6. The replacement part(s) and improvements are guaranteed in the same way as the original delivery. The period of liability for deficiency with respect to the original delivery is extended by the period of interruption caused by the repair work.
7. The supplier can refuse to remedy deficiencies so long as the buyer has not fulfilled his obligations.
8. If the buyer or third parties without the supplier's approval carry out alterations or repairs, then the supplier is not liable for the consequences and any remaining guarantee is nullified. Further, suppliers maintenance and operation manuals have, without prejudice, priority over and above buyers own manuals and instructions.
9. A liability of the supplier as to whether the merchandise delivered is suitable for the purposes contemplated by the buyer is in any case excluded; nor will any damage be repaired which occurred in conjunction with the processing of the goods supplied.
10. Any further claims by the buyer especially claim for repair of damage not resulting from the original delivery, are not acceptable.

IX. Supplier's right to withdraw

If unforeseen occurrences as defined in section IV of the delivery conditions substantially alter the commercial importance, or the content of the performance, or seriously affect the supplier's business, and if execution of the order subsequently proves impossible, the supplier has the right to withdraw fully or partly from the contract. Claims for damages made by the buyer in the event of such withdrawal are unacceptable. If the supplier intends to make use of this right to withdraw, he must immediately inform the buyer, even if an extension of the delivery date had been agreed on.

X. Jurisdiction

Place of performance and jurisdiction for all obligations as well as jurisdiction for summary procedures on bills of exchange is ZUG (Switzerland), for both parties. The buyer's conditions which are contradictory to these delivery conditions are not binding for the supplier, even if the order was based on them and the supplier has not expressly objected to their content.

Special Conditions for Delivery with Assembly

1. The expenses incurred by the supplier for assembly and commissioning and severance pay for each assembler must be reimbursed, also for overtime, work on Sundays and Holidays. Traveling time and waiting time count as working time. The buyer must reimburse the supplier for the expenses in forwarding material, service tools expenses, and for personnel traveling to and from the buyer's site.
2. All structural work must be completed before assembly commences to the extent that assembly work can begin immediately following delivery and can be carried out without interruption. The foundations must be completely dry and set, and the rooms in which the assembly takes place must be sufficiently protected against the elements, well lit and adequately heated.
3. A dry, lockable room with light must be made available for storing machine parts, materials, tools, and other items deemed value by the supplier. This room must be kept guarded and supervised.
4. Buyer to provide and grant access to the supplier to buyer's location, without delay for assembly and commissioning minimum eight (8) hours per day, during normal working hours.
5. The buyer must at his expense take charge and promptly make available:
 - a. Auxiliary manpower and skilled labor in sufficient number as required by the supplier
 - b. The equipment and materials necessary for assembly and putting the delivered product into operation
 - c. The unloading of the truck, the railway truck and conveyance of the delivered product from the railway truck or ship to the assembly site
6. Parts carried by the supplier are transported at the buyer's own risk.

These Conditions of Sale and Delivery shall be binding if declared applicable in our offer or order acknowledgement. Other requirements stipulated by the buyer shall only be valid if they are expressly acknowledged in writing by the supplier.

Heppenstall Technology AG
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