

General conditions of Trade – DIMA Werkzeuge GmbH, 73230 Kirchheim, Germany

Article 1 - Application

1. Our general conditions of trade will apply to the exclusion of all others. They will apply in relation to persons carrying on business (as recognised by § 14 German Civil Code), corporate bodies and other entities recognised under public law. Conditions of trading of a contractual partner which differ from ours are not binding on us except insofar as we have accepted them in writing. Our general conditions of trade apply even in a case where in knowledge of a contractual partner's different general conditions of trade we have made supplies to such other partner without rejecting them.

2. All agreements between us and the customer concerning the contract have to be laid down in written form, especially guarantees and the cancellation of the written form. Oral agreements are void.

3. These general conditions of trade will apply also in any future contracts with the customer, even when not mentioned explicitly at their conclusion.

Article 2 - Offers, executions and contents of contract

1. Our offers do not constitute legally binding offers. If a contract is offered to us we may accept it within four weeks.

2. Samples and documents, for example brochures, catalogues, illustrations, drawings, technical data, weights, measurement and size specifications, are only general indications, unless they are expressly indicated as binding.

3. Cost estimates for work performances have to be paid.

4. We reserve the property rights and copyrights on illustrations and drawings, calculations and other files and documents; they may not be disclosed to any third party. This applies especially to files and documents labeled confidential; our customer undertakes to obtain our explicit written consent prior to their disclosure to a third party. In case of violation of these rights the customer will be liable for damages and we are entitled to withdraw from any contract concluded and not fulfilled.

Article 3. Prices, terms of payment, early payment, withdrawal from contract, delay, taking back, retention, setting-off, counterclaim, liability on a flat-rate basis

1. Insofar as the confirmation of order does not state otherwise, all prices are ex works, excluding packing, freight, insurance, duties, fitting, foreign taxes etc. as agreed plus current VAT for orders. Concerning export deliveries the VAT is not applicable, in case the export deliveries are exempt from VAT.

For pallets the lending fee is charged. In case of an agreed delivery, the delivery takes place ex curb upon the agreed unloading point. In this case, the customer is obliged to provide the necessary personnel and tools for unloading at his own expense.

2. Goods or services ordered will be priced according to the price list valid on the day of the order. Should purchase prices rise between placement of order and delivery, especially because of rising prices for raw materials like copper, aluminium, steel etc., we reserve the right to pass on the additional cost.

3. In the absence of agreement to the contrary every payment must be made in full within 30 days of the date of the invoice. 2 % discount shall be given for payment within 10 days upon receipt of the invoice.

4. We are under no obligation to accept payment by cheque or bill of exchange. Should we accept said forms of payment this is on account of performance. The costs for seizure and discounting are borne by the customer.

5. In case the customer gets into default of at least two instalments during partial payment we are entitled to accelerate maturity regarding the entire demand. This also applies to cases in which bills of exchange or cheques have been taken in before, which in these cases will be returned for cash.

6. If an essential change or deterioration of the customer's economical situation occurs after the execution of the contract, which endangers our claim for payment, or if said situation already existed for the customer at the time the contract was executed but did not become known until afterwards, we may refuse performance until payment has been made. This particularly applies to cases in which unsuccessful execution proceedings, protest against a bill of exchange or a cheque, an petition for insolvency filed by the customer, moratorium endeavours, liquidation or such have been undertaken. In these cases we may offer the customer a deadline for payment or for a provision of security. Insofar as the payment or the security is not provided despite the deadline, we have the right to withdraw from the contract.

7. Where goods delivered by us are reclaimed these goods -with an appropriate discount- will be credited to the customer maintaining other claims for compensation and their account adjusted accordingly. The customer will have the right in any particular case to demonstrate that the loss in value is not as much as the discount.

8. Only recognised debts or debts which are the subject of enforceable legal judgments can be set against amounts due to us. Debts due to us may not be reduced by set off or counterclaim. The customer is only entitled to make retentions insofar as they are based on claims arising out of the same contract.

9. As far as we can demand the payment of damages instead of performance or we admit a cancellation of order, a damage-overall of 25% of the order sum is agreed upon.

The customer is entitled to prove that we have suffered a lower damage. The assertion of a higher damage is not excluded by this regulation.

Article 4. Freedom of performance, delivery time, partial delivery, withdrawal, damages caused by delay

1. We reserve the right to a timely and correct delivery, as far as we do not have guaranteed our performance, or as far as we do not have assumed the risk of supply.

2. The commencement of the delivery times set by us presupposes the arrival of all documents, permissions, releases and any further information, which have to be brought by the customer, the clarification of any details of the order, especially all technical questions and the receipt of any agreed pre-payment agreed upon. Partial deliveries are permissible insofar as they are reasonable.

The delivery time is considered as observed, if the object of delivery has been sent off at the date of delivery or, in case dispatchment is impossible without our fault, the customer is informed about our readiness for sending

3. We are not responsible for delays in deliveries due to force majeure or through circumstances for which we are not to blame, including traffic and transport disturbances, interruption of operations, strikes, blockages, lack of raw materials and war, as far as we do not have guaranteed our performance, or as far as we do not have assumed the risk of supply.

4. In the event that due to circumstances referred to in subparagraph 3 we cannot make deliveries within the agreed time delivery time will be extended as necessary. If a delivery problem for which we are not responsible such as mentioned in subparagraph 3 continues beyond the extra delivery time we have the right to withdraw from the contract.

5. If we cannot make delivery within the agreed time the customer is obliged on our request to declare within a reasonable period whether or not he still wishes delivery. If he fails within a reasonable time to make this declaration we are entitled to withdraw from the contract.

6. If we are delayed in delivery, the following applies:

a. If there is a fixed date for delivery or if the customer can prove that his interest in the fulfillment of the contract has ceased or if the delay is caused by an intentional contract violation for which one of us, our representatives or vicarious agents can be held responsible, we will be liable for any damages caused by such a delay in accordance with legal provisions.

b. If we, our representatives or our vicarious agents have violated an essential contractual obligation or violated any contractual obligation in a grossly negligent manner and if there is no liability according to legal provisions in regards to subparagraph a, our liability for damages caused by default will be limited to predictable and typical damage.

c. In any other cases our liability for damages caused by delay will be limited to a maximum of 5 % of the value of goods.

d. The customer's other legal claims are not excluded hereby.

e. The burden of proof is not reversed hereby.

Article 5 - Risk, delivery, assembly

1. As far as the confirmation of the order doesn't state the contrary, delivery is ex works.

The dispatch is always at the expense of the customer, even when delivery is from a different place than the place of performance, and at the risk of the customer, even when the dispatch is free of charge and/or takes place by own personnel or vehicles.

2. If delivery by us has been agreed upon, the customer has to provide competent personnel and necessary technical equipment (e.g. stacker) in time, in order to ensure a smooth unloading. It is presupposed that the vehicle can approach the unloading place directly and can be unloaded immediately. Costs arising from the fact that these conditions are not given will be charged separately.

3. Any transport damages have to be announced directly upon receipt of the goods to the railway, the post office, carrier or deliverer and certified by them.

4. Insofar as the customer wishes we will arrange insurance for carriage; the customer bears the cost thereof.

Article 6 - Warranty against defects

1. Products are to be examined by customers without delay after delivery, as far as it is common practice. Notice must be given to us without delay if there is any defect. If the customer fails to give the notice the delivery is deemed to have been accepted unless the defect is such that it could not be discovered upon examination. Should such a defect later come to light notice must be given without delay after discovery in absence of which the goods are deemed to be accepted notwithstanding this defect. Clause 377 of the German Code of Commerce (HGB) apply.

The customer's obligation to check the goods remains even in the case of a recourse by the company in accordance with paragraph 478 of the German Civil Code (BGB). If he fails to immediately report the defect claimed by his customer, the goods will be considered as being approved despite the defect.

2. Where there is a failure we have the right to decide how it is to be put right taking into consideration the nature of the failure and the requirements of the customer. If remedial work is still required after 3 unsuccessful attempts it may be regarded as failed. (This subparagraph does not apply in the case of a recourse according to paragraph 478 of the German Civil Code (BGB)).

3. In connection with remedial work for failures we will have no obligation to bear the costs which arise, in particular (but without limitation) transport, travel, work and material costs, insofar as these have been increased because the product has been transported to another place from the premises or place of business of the customer to which it was delivered. (This subparagraph does not apply in the case of a recourse according to paragraph 478 of the German Civil Code (BGB)).

4. Any claims based on defects including damage claims become invalid after one year. This does not apply in case of a recourse according to paragraph 478 of the German Civil Code (BGB). Furthermore, this does not apply in cases of paragraph 438 subparagraph 1 No. 2 and 634a subparagraph 1 No. 2 of the German Civil Code (BGB). Neither does this apply to claims for damages because of injury of life, body or health or because of a grossly negligent or deliberate neglect of duty by us or our vicarious agents.

5. The sale of used goods takes place under exclusion of any warranty claims.

Article 7. Liability for compensation of damages and compensation of expenditures

1. In case we are liable for compensation of damages, the following shall apply:

a. Insofar as the claims are based on an intentional violation of an obligation for which we, our representatives or our vicarious agents may be held responsible, we shall be liable for compensation of damages according to legal provisions. If the claims are based on a grossly negligent violation of an obligation by us or our representatives or vicarious agents, our liability shall be limited to predictable and typical damage.

b. Insofar as we or our representatives or vicarious agents have negligently violated any fundamental contractual obligation and there is no liability according to the legal provisions regarding subparagraph a, liability shall be limited to predictable and typical damage.

c. Insofar as no other provisions have been made under a and b, our liability for compensation of damages is excluded.

2. The exclusions and limitations of liability under Subparagraph 1 shall also apply to any other claims, in particular claims in tort or claims for reparation for unsuccessful expenditures instead of performance.

3. The exclusions and limitations of liability under Subparagraph 1 shall not apply to any existing claims in tort in accordance with paragraphs 1 and 4 of the German Product Liability Law or due to culpable injuries to life, body or health. Furthermore, the exclusions shall not apply either if we have given a guarantee for the quality of our goods or of a performance or have assumed the risk of supply and if the case of guarantee has arisen or the risk of supply has come to reality.

4. As far as our liability is excluded or limited, this also applies to the personal liability of our employees, staff members, representatives or vicarious agents.

5. Special provisions for damages due to delay have been made under Article 4, Subparagraph 5.

6. The burden of proof is not reversed hereby.

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Article 8 - Retention of Title

1. Property in goods delivered remains ours until receipt of all payments under the contract and in cases where there is a running account so long as anything is outstanding on such account. This also applies when our invoices are included on a running account and the balance is struck and accepted. It also applies to future claims.
2. The customer is under obligation to handle goods that have been delivered with care and to store them in accordance with the special requirements of such goods. He is under the further obligation to insure them for their replacement value at his own cost against fire, flood and theft.
3. Should goods be seized by third parties claiming liens or other rights the customer must let us know immediately in writing so that we can raise a claim under clause 771 of the German Civil Process Order (ZPO). Insofar as such third party does not indemnify us for the costs (whether for court or out of court costs) arising in connection with a claim under clause 771 of the Civil Process Order (ZPO) the customer is liable to us for the amount thereof.
4. The customer may make onward sales of and use delivered goods (which in this clause means goods that have been delivered by us subject to this clause) in the ordinary course of business. He is however deemed to have assigned to us all claims which accrue to him from such onward sale or transmission of goods against the acquirer thereof or other third party to the extent of the value of the goods in question with all rights arising in priority before all others and such assignment is irrespective of whether the delivered goods have been sold onward before or after further work has been done on them. The amount of our invoice is deemed to be the value of the goods including VAT. If the onward sold goods are jointly owned the assignment of the claims extends to that part thereof which corresponds to our share in the property. The customer is not entitled to make any further alienation of the goods particularly (without limitation) by way of pledge or security.
5. The aforementioned assignment shall not prevent the customer from taking steps to obtain payment of his claims. Our rights over such claims are not affected thereby. We are not entitled however to take steps to obtain payment of the claims ourselves so long as the customer fulfils his payment obligations as and when they arise, is not overdue with payments and in particular no steps are taken to commence an insolvency procedure or the customer does not cease to pay debts as they fall due. Should this arise we have the right to require the customer to provide us with particulars of the assigned claims and of the debtors and to give us all information necessary for collection and supply us with the relevant documents and give the debtor notice of the assignment.
6. Work carried out or changes made to delivered goods are for our benefit. The right of the customer to make onward sales of delivered goods attaches to the article in its altered state. If the delivered goods are combined with other goods not our property we will acquire joint property in the new article in proportion to the objective value of the goods that we supplied in the article in which they were so combined at the time that they were so combined. The same rules will apply with regard to such article as for other goods supplied under reservation of title.
7. Upon incorporation of goods in which we have retained title as a substantial component in a property, ship, shipyard or airplane the customer assigns to us together with all rights arising and in priority before all others the said claims which accrue to him as against third parties as security for our claims against him to the extent of the value of the goods in which title has been retained. Article 8, subparagraph 4, sentences 2 and 3 apply accordingly.
8. Upon disposal of a property, ship, shipyard or airplane belonging to him in which he has incorporated goods in which we have retained title as a substantial component the customer assigns to us by way of security for our claims against him all claims which he has against a third party in respect thereof to the extent of the value of the goods in which title has been retained with all rights arising and in priority before all others. Article 8, subparagraph 4, sentences 2 and 3 apply accordingly.
9. If delivered goods are mixed or combined with other goods not our property so that they become indistinguishable we acquire joint property in the product thereof in proportion of the objective value of the goods we have supplied to the other goods at the time of such mixing or combination. If the result of the process is that such product is principally the property of the customer it is hereby agreed that the customer recognizes us as proportionate joint owner and is wholly responsible to safeguard our sole or joint property rights.
10. We obligate ourselves to release the securities due to us upon the customer's demand insofar as the realizable value of our securities exceeds the claims to be secured by more than 10 % or exceeds the nominal value by more than 50%; the releasable securities are ours to choose.

Art. 9 - Patent rights

If no other agreements are met, we have to provide the goods free from commercial patent rights and copyrights of third persons in the country of the place of delivery only.

Article 10 - Applicable law, place of performance, jurisdiction

1. The law of the Federal Republic of Germany to the exclusion of the United Nations Convention of Vienna (CISG) applies in relation to the present contract.
2. The place of performance for all commitments of this contract is D-73230 Kirchheim/Teck, Germany.
3. For contracts with businessmen, legal persons of public law, special funds under public law and with parties, which have no in-land jurisdiction the place of competent jurisdiction shall be in D-73230 Kirchheim/Teck, Germany. However, we reserve the right to give notice of any claim also at the residence of the customer.

Article 11 - Severability

Should a provision of this contract be or become impossible of being given effect the application of the other provisions of this contract will not be thereby affected. In this case the parties will have the obligation to set aside the unworkable provision in a further agreement which gives effect in the most efficient manner to what the parties would have agreed had they been aware of the ineffective provision.