

I. General

1. All deliveries and services – including future ones - shall be based exclusively on these conditions unless agreed otherwise in writing. Deviating purchasing conditions from the buyer shall only apply with our written consent.
2. Our quotations shall be subject to confirmation. To the exception of any special agreement, a contract shall be concluded with our written order acknowledgement or by performing the delivery. **Our staff shall be particularly obliged to confirm any verbal collateral agreements or other undertaking**, which go beyond the contents of the written agreement or amend these general conditions of business and sale to our detriment, in writing.
3. We reserve all copyrights and rights of ownership on all samples, cost estimates, drawings and any similar tangible or intangible information, even in electronic form. This information shall not be made accessible to third parties. The illustrations and drawings, colour, weight and dimensional indications pertaining to the quotation are only approximate values unless marked expressly as binding.

II. Prices and terms of payment

1. Unless agreed otherwise, our prices shall be ex works including loading in the factory, however, excluding packaging and the applicable VAT.
2. For delivery periods exceeding 2 months, we shall be entitled to decrease or increase the agreed prices should major changes in wage, salary, material or raw material costs occur after concluding the agreement where the changes do not fall into our responsibility. Should the price increase exceed 5 %, the buyer shall be entitled to rescind from the agreement in writing within 2 weeks after receipt of the information on the price increase.
3. Unless agreed otherwise, payments shall be made without any deduction on account of SIPOS Aktorik in the following instalments:
1/3 on receipt of the order acknowledgement, 1/3 once the buyer has been notified that the main parts are ready for shipment, and the final instalment shall be paid one month after the date of the final invoice.
Payments shall not be considered as effected unless SIPOS Aktorik can dispose of the amount at their bank. Cheques and bills of exchange shall only be accepted in payment; bank charges shall be borne by the buyer. They are immediately due.
4. Should the buyer be in arrears, interest, at a rate of 8 percent above the base interest rate and amount to at least 10 %, shall be due.
5. The buyer shall only have the right to retain payments or settle them with compensating claims to the extent that their compensating claims have been determined as undisputed or legally effective.

III. Delivery time, delayed delivery

1. Unless agreed otherwise, the delivery period shall start with the dispatch of the order acknowledgement, but not until all commercial and technical details of the order execution have been settled and the buyer has met all obligations such as procurement of the required official certificates and approvals and has made a down payment. Should a definite order date have been fixed, the delivery period is extended accordingly. The above shall not apply if the delay falls within our responsibility.
2. The delivery date can only be observed if the supplier has received the correct deliveries on time. We will advise as soon as delays become likely.
3. The delivery deadline shall be considered as observed if the goods to be delivered have left our premises until expiration of the latter or if the buyer has been notified that they are ready for shipment and the shipment has been delayed for reasons beyond our control. Should final inspection be required, the deadline shall be considered as met if the date of the final inspection or the indication of willingness to perform the final inspection is within the deadline. This shall not apply if the reason for rejecting the goods is justified.
4. Should the shipment or the acceptance be delayed due to events which fall into the responsibility of the buyer, at least 0.5 % of the invoice amount of the stored delivery shall be charged per month for storage on our premises.
5. Should SIPOS Aktorik fall behind schedule and the buyer suffer a loss, our liability for slight negligence shall be restricted to a lumpsum compensation for delay of 0.5 % of the order value of the delayed delivery per full week. The compensation is restricted to a maximum of 5 % of the order value. The claim for damages instead of performance shall not be affected.

IV. Transfer of risk, acceptance, force majeure

1. The risk shall be transferred to the buyer after the goods have been transferred to the forwarding agent, at the latest after they left the supplier's premises. This shall also apply even if the delivery shall be made in instalments or if we should have taken on other obligations such as shipment costs or delivery and installation. Should final inspection be required, the transfer of risk will only be considered as transferred to the buyer if the final inspection has been performed. It shall be performed in due course on the date of delivery, or as alternative after notification of the availability for final inspection. The supplier may not refuse the acceptance in the case of a non-substantial defect.
2. Should the shipment or the acceptance be delayed due to events which do not fall within our responsibility, the risk shall be transferred to the buyer as from the day the shipment or the availability for acceptance was indicated.
3. Deliveries may be made in instalments if this should be just and reasonable for the buyer.
4. Unforeseeable and inevitable events beyond our control (e.g. force majeure, strikes and lock-outs, breakdowns, difficulties in material or energy procurement, transport delays, shortage of staff, energy, and raw materials, actions by authorities as well as difficulties in the procurement of approvals, in particular import and export licenses) shall extend the delivery deadline by the duration of the failure and its effect. This shall even apply if the obstacles occur with our suppliers or during delay in delivery. Should the obstacle not be of temporary nature only, both contractual parties shall be entitled to cancel the contract. Claims for damages shall be excluded in the aforementioned cases.

V. Retention of title

1. We reserve the right to retain the title of ownership of the goods to be delivered until all payments within the framework of the delivery contract have been made. Should an open account relationship exist, the retention of title applies to the confirmed balance.
2. The buyer shall be obliged to carefully handle and maintain the conditional commodities. They shall be obliged in particular to provide sufficient insurance cover at reinstatement value against loss and damage. The insurance policy as well as proof of premium payment shall be submitted upon request. Any claims arising from the insurance relationship shall already be ceded at this point in time.
3. Machining and processing of the conditional commodities shall always be performed for us without any obligations. Should these commodities be mixed or combined with other goods we shall obtain ownership rights on new goods proportional to the invoiced value of the conditional commodities in relation to the invoiced value of other materials.
4. Should the buyer sell conditional commodities as such or in combination with purchased goods be sold, the buyer shall immediately assign all claims arising from the resale to the amount of the value of the conditional commodities including all subsidiary rights and priority before the rest; we shall accept the assignment.
5. The buyer shall only be entitled and authorised to resell, use or install the conditional commodities within the normal course of business and only under the condition that the claims shall actually be assigned to us. We authorise the buyer, subject to cancellation, to collect the claims assigned; we shall not use our own right to collect the claims as long as the buyer meets their payment obligations including those to third parties. Should the buyer be in arrears or a petition to institute insolvency or cancellation proceedings have been filed, the buyer shall name the debtors of the assigned claims upon request and notify them of the assignment. We shall be entitled to notify the debtors of the assignment ourselves.
6. The buyer shall immediately notify of executions imposed on conditional commodities or the assigned claims and pass on the documents required to file an objection. Costs for legal intervention shall be at the buyer's expense.
7. The right to sell, use or install the conditional commodities and to collect the assigned claims shall become void if payment has been stopped, a petition to institute insolvency proceedings has been filed; or in case of judicial or extra judicial conciliation proceedings; for a check or bill protest, the direct debit authorisation shall be void.
8. Should the value of the collateral exceed our claims by more than 10 %, we shall release the collaterals upon request of the buyer at our own discretion. After all claims arising from this business relationship have been settled, the ownership of the conditional commodities and the assigned claims shall be transferred to the buyer.

9. The buyer shall neither pledge nor transfer the goods as collateral. In the case of debt recovery, seizure, or any other dispositions by third parties, the buyer shall immediately notify us. Recovery of conditional commodities shall not be considered as cancellation of the contract. Should we cancel the contract, we shall be entitled to use these commodities at our own discretion. The petition to institute insolvency proceedings shall entitle us to cancel the contract and to claim immediate recovery of the goods delivered.

VI. Claims for defects

1. Defects shall be advised immediately, but not later than 8 days after receipt of the goods, for hidden defects not later than 3 days after discovery, and in writing. Should these periods be exceeded, all claims and rights arising from the liability for defects shall become void. The statutes of limitation shall be 12 months from delivery or agreed acceptance.

Material defects

2. In case of justified complaints we shall either deliver replacements or remedy the defects at our own discretion. Should one of the replacement deliveries also show defects or the reworking fail, be rejected or delayed without justification, the customer shall be entitled to demand a reduction of the price or - should the defects be substantial - to cancel the contract and claim damages instead of performance according to section VII after the expiry of a reasonable extension. Subsequent performance cost incurred due to the fact that the purchased goods were transferred to another location than the business establishment of the customer, shall not be covered.
3. Replaced parts shall become our property.
4. For the following cases, no liability for material defects shall be granted: Improper use or misuse, incorrect assembly or commissioning by the buyer or third parties, normal wear, incorrect or negligent handling, improper maintenance, unsuitable equipment, defective construction work, unsuitable building ground, chemical, electro-chemical or electrical influence unless the buyer is able to furnish proof that the defect already existed on the transfer of risk and cannot be attributed to the above circumstances.
5. Should the buyer or a third party inexpertly rework the damaged part, we shall assume no liability for consequential damage. The same shall be applied to changes to the goods to be delivered without our prior written consent.

Title defects

6. Should the use of the goods result in an infringement of industrial property rights or domestic copyrights, we shall principally provide the buyer at our own expense with the right for further use or shall modify the goods in such reasonable manner to allow the buyer to continue using the goods without infringement of industrial property rights. Should this not be possible under economically reasonable conditions or within a reasonable period of time, the buyer shall be entitled to withdraw from the contract and shall be entitled to claim damages instead of performance in accordance with paragraph VII. Under the above conditions, we shall also be entitled to rescind the contract. The violation of the rights of third parties shall only be considered as defect should these property rights be applicable in the Federal Republic of Germany. A defect in title shall not exist, if the latter can be attributed to an instruction of the buyer and/or the violation of the right may be attributed to the buyer having made unauthorised modifications to the goods or their failure to use them in compliance with the contract.
7. The obligations in paragraph VI, no. 6 shall be final for infringements of industrial property or copyrights. They shall only apply if the buyer notifies us immediately of infringements of industrial property or copyright put forward. Furthermore they shall only apply if the buyer provides us with all reasonable support in rejecting the claims put forward, or enables us to perform the modifications in compliance with paragraph VI.6 and if we may take all measures including extrajudicial settlements.

VII. Liability

Claims for damages against us shall, irrespective of the type, be excluded if we, our legal representatives or vicarious agents have caused the damage by simple negligence. This exemption from liability shall neither apply to injuries, nor to the granting of a contractual warranty, nor in case of violation of essential contractual obligations, which may endanger the achievement of the contractual purpose. However, the liability shall be restricted to the scope of warranty, or in case of negligent violation of essential contractual obligations, to typical contractual and foreseeable damage. Claims in accordance with the Product Liability Act shall not be affected.

VIII. Statute of limitation

Except for the claims arising from the liability for defects, in accordance with the Product Liability Act or damage incurred from lethal injuries, bodily harm or damage to health, claims for damages shall be barred after one year after the buyer either had knowledge of the damage and their liability for damages or ought reasonably to have had knowledge without gross negligence.

IX. Use of software

- Should software be included in the scope of delivery, the buyer shall be granted a non-exclusive right for the use of the software delivered, including documentation. The use of the software on the goods intended for this purpose shall be permitted. Any use of the software on more than one system is prohibited.
- The buyer shall only be entitled to reproduce, revise or translate software or perform a change from the object to the source code to the extent permitted by law (§§ 69 a et seqq. of the German Copyright Act [UrhG]). The buyer undertakes not to remove or change any manufacturer data, in particular any copyright mark, without our explicit prior consent.
- Any other rights on the software and the documentation including copies shall remain with us or the software supplier. Granting of sub-licences is prohibited.

X. Applicable law, court of jurisdiction

- All legal relations between us and the buyer shall be governed by the **law of the Federal Republic of Germany**. The United Nations Convention on Contracts for the International Sales of Goods (CISG) as of 11 April 1980 shall be excluded.
- Court of jurisdiction shall be the court responsible for the headquarters of our company.** However, we shall be entitled to file a suit at the headquarters of the buyer.