



GENERAL TERMS AND CONDITIONS OF SALE

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I. SCOPE OF THESE TERMS AND CONDITIONS

1. Subject to any agreements to the contrary in any individual case, contracts with us are formed solely pursuant to the provisions set forth below; by placing an order, the Customer is deemed to consent to our Terms and Conditions. Any terms and conditions of the Customer that conflict with or depart from our own Terms and Conditions shall only be binding on us if we have expressly acknowledged them in writing. Our Terms and Conditions shall apply even where, with knowledge of conflicting or deviating terms and conditions of the Customer, we deliver the goods or services provided by us without reservation.
2. These General Terms and Conditions shall apply to all goods and services provided by us and to all obligations resulting out of any contract relations with the Customer.
3. Vis-à-vis entrepreneurs and legal entities under public law, our Terms and Conditions shall also apply with respect to future business relations.

II. OFFER/AMENDMENTS

1. Our offers are non-binding and subject to change, except where the parties have expressly otherwise indicated.
2. A contract with us is only deemed to be formed where the Customer accepts our offer without reservation or the Customer receives our written confirmation of order or we commence rendering the goods or services.
3. Where we issue a written confirmation of order, such confirmation shall be determinative as to the substance and scope of our contract, unless it was made an express agreement to the contrary.
4. Amendments, ancillary agreements and addenda and any agreements as to quality or the provision of warranties shall only be valid where contained in an express agreement of the parties; such agreement must be made in writing in order to be valid and effective. Priority of – also an oral – individual agreement pursuant to Section 305b BGB shall remain unaffected.

III. PERFORMANCE OF CONTRACT

1. Unless expressly otherwise agreed, our products and/or services shall only have the qualities, technical data etc. expressly stipulated in the contract; these shall only constitute an assumption of warranty where we expressly state that we intend to be liable for such qualities without regard to fault, or where we have expressly referred to them as such; declarations of warranty must be given in writing in order to be valid and effective.
2. We reserve the right to make departures in technical and design respects from the descriptions and details shown in our brochures, catalogues or similar sales documentation and to replace products or parts thereof with products which are of technically equal value or better value, without this entitling the Customer to assert rights against us on the basis thereof. Such descriptions and details and advertising statements (including such made by the manufacturer) shall not constitute any declarations of warranty. Unless otherwise provided based on applicable law, we shall only be responsible for furnishing advice to the extent that we have assumed a contractual primary duty to do so.
3. The Customer shall inform us in a full and complete manner of all facts which are relevant to our provision of the products and/or services. We shall bear no obligation to verify data, information or other contract performance furnished by the Customer as to the completeness and correctness thereof provided that, taking into account the specific circumstances of the individual case, there is no cause to do so or we have not expressly assumed a duty of verification as a contractual obligation.
4. To the extent that works are to be performed at the Customer's location, the Customer shall furnish our staff with the requisite workstations and tools free-of-charge.
5. Where we perform work outside our business premises, the Customer shall be responsible for taking all measures necessary to fulfil its duties to ensure public safety, unless, based on the nature of the matter or on any agreement with the Customer, a different rule applies. We shall be entitled to refuse to render our goods and/or services for so long as the necessary measures have not been undertaken.
6. Irrespective of our continuing responsibility to render the goods and services owed by us pursuant to contract, we shall be entitled, without restriction, to engage third parties for performance of the contract. Where staff members whose involvement has been agreed by contract are absent through no fault of ours, we may replace them with other suitable staff members.



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IV. CUSTOMER'S DUTIES OF COOPERATION IN RESPECT OF DEVELOPMENT, MANUFACTURING AND CONSULTING SERVICES

1. On development projects, the success of such projects will ordinarily be premised on close cooperation between the Customer and us. For this reason, the parties hereby undertake to be considerate of their mutual needs, and to comprehensively and promptly inform each other and to mutually give precautionary warnings to each other regarding risks and to protect one another mutually against disruptive impacts which may also come from third parties.
2. The Customer hereby assumes the obligation (which shall constitute a material duty under the contract) to ensure that all of the agreed contract obligations of cooperation and provision of materials are rendered and are of the requisite quality and provided by the deadlines agreed and/or needed in order to complete the project, without entailing any additional cost to us. To the extent necessary to ensure success of the project, the Customer shall, in particular, furnish sufficient numbers of its own staff and provide competent Customer contacts for the entire duration of the project. Where the specifications or another part of the parties' contract contain requirements with respect to external systems operated by the Customer or by third parties, the Customer is deemed to warrant to us that such requirements will be met.
3. Where information or documents of the Customer are revealed to be incorrect, incomplete, ambiguous or objectively incapable of being executed, the Customer shall make the necessary corrections and/or undertake the necessary supplementations promptly upon notice by us. The Customer shall promptly remediate/cause to be remediated any defects or functional faults of components furnished by the Customer which we have notified to the Customer.

V. RIGHTS OF USE

1. In cases involving delivery of work product rendered pursuant to Customer order (for example: plans, construction drawings, software or the like), we hereby grant the Customer a simple, i.e. non-exclusive right of use to such work product, unless the parties have expressly otherwise provided by contract. The scope of such right of use shall be defined by the agreement made in the specific case by the parties.
2. Where the work product is not created by us, we are deemed only to grant such rights of use as we have been authorised to grant by the proprietor of the respective rights.
3. With respect to use of the above-referenced work product (and the exercise of the related rights of use), the Customer bears an obligation to comply with the respective terms and conditions of use and, where applicable, to give an undertaking to do so. We shall in each case forward the relevant terms and conditions of use (including the rights of use granted) to the Customer.
4. Irrespective of the scope of the assignment of rights to the Customer, we shall in all cases be entitled to use ideas, concepts, acquired proprietary information etc. for other developments and services, including for other customers.

VI. TIMELINES, DEADLINES AND DEFAULT

1. Deadline planning and milestones on a project serve as orientation for a project schedule. Deadlines shall only be deemed of a binding nature where they have been expressly agreed as binding deadlines; in order to be valid and effective, any such agreement must be made in writing.
2. To the extent no binding timelines and deadlines have been agreed with us, we shall not be deemed in default until such time as the Customer has previously granted us a reasonable grace period for rendering the goods and services owed to no avail.
3. In any event, timelines shall only begin to run from such time as all of the acts of cooperation owing by the Customer have been performed and, where applicable, from such time as any agreed downpayment is received. Subsequent change orders or acts of cooperation which the Customer has been late in rendering shall be deemed to reasonably extend the delivery periods.
4. Where the goods and services owed by us are delayed due to unforeseeable circumstances through no fault of ours (e.g. strikes, business disruptions, obstacles to transport, shortages of raw materials, measures of public authorities - in each such case, including any such circumstances arising in respect to our sub-suppliers, as well



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– as well as non-timely deliveries of goods and services to us), we shall be entitled to cancel the contract in whole or in part or, at our option, to defer delivery of the goods and services by a period equal to the duration of the obstacle. We shall inform the Customer promptly as to the unavailability of the goods and services. In the event of our cancellation of the contract, we shall, in addition, refund the consideration paid by the Customer. The Customer shall in no case have any claims for compensatory damages.

5. Where the Customer fails entirely or in part to fulfil its duties of cooperation, collaboration or provision of media and tools, any deadlines for performance of the contract affected by this shall be deemed no longer binding; in particular, we shall not be deemed in default. After providing a warning to no avail, we shall be entitled to demand damages for losses incurred thereby, including for any additional expenditures incurred. In such case, the risk of accidental destruction or accidental deterioration of the product shall pass to the Customer at such time as the default of acceptance on the part of the Customer occurs.
6. Where the Customer fails even within such reasonable grace period following a further warning by us to fulfil its duties of cooperation, collaboration or to furnish media and tools, we shall, in addition, be entitled to terminate the contract without notice. In such case, we shall be entitled to claims for damages and compensation at least in such amounts as result from sec. 645 of the German Civil Code [German acronym: BGB]; the foregoing shall have no effect on our right to assert further claims beyond such amounts. We shall likewise be entitled to assert the same right in the event that, due to delays which have arisen and for which the Customer bears responsibility, we are unable to carry out the project within a reasonable period or only able to do so at substantially greater cost, for example as a result of other obligations.
7. Where, for reasons for which we bear responsibility, a default occurs on our part, or where our duty to render the goods and services is made impossible as a result of reasons for which we bear fault under sec. 275 (1) BGB, or where we are entitled to refuse to render the goods and services pursuant to sec. 275 (2) and (3) BGB, then, subject to the limitations on liability set forth in clause XI. of these Terms and Conditions, which shall remain unaffected hereby, we shall bear liability exclusively in line with applicable law.

VII. PASSAGE OF RISK

The risk of accidental destruction or accidental deterioration of the product shall pass to the Customer at the time of despatch even where we have assumed the cost of shipment or have undertaken to perform additional services or where a partial delivery is made. The Customer is referred in this respect to section VI.5., 3rd sentence of these Terms and Conditions.

VIII. FORMAL ACCEPTANCE

1. To the extent our goods and services require formal acceptance, the Customer shall bear an obligation to do so. Minor defects which do not seriously adversely affect the fitness of the goods and services for their contractually agreed purpose shall not entitle the Customer to refuse formal acceptance; this is without prejudice to the Customer's rights to assert statutory claims for defects.
2. Formal acceptance shall be deemed to have occurred where the Customer refuses to declare formal acceptance, in breach of section VIII. 1. above, or, despite a request setting a reasonable deadline, refuses to participate in a joint formal acceptance test; or, the Customer, after the performance of a joint formal acceptance test, does not promptly declare formal acceptance in writing, although we have requested the Customer to do so upon seven business days' notice, except where the Customer, within such period, specifies the defects in writing on the basis of which it is refusing formal acceptance, in which case at the commencement of the period, we shall advise the Customer once again with respect to the envisaged significance of its action.
3. In the case of partial deliveries which are complete in and of themselves, we shall be entitled to require partial formal acceptances.



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4. Services in the nature of intellectual property shall be deemed to have been formally accepted if the Customer does not expressly assert written complaints, within 30 days of receiving them in written form, specifically designating the defects. At the outset of the period, we shall advise the Customer once again with respect to the envisaged significance of its action. In the event of any such complaint, we shall undertake a review of the services rendered by us. Where a Customer's complaint is revealed to be unmerited, the Customer shall bear the costs we have incurred as a result, except where the Customer is culpable only of slight negligence.

IX. PRICES AND PAYMENTS

1. The applicable prices are the prices quoted by us, to which the statutory rate of VAT is added in each case, to the extent any VAT arises thereon. Unless otherwise agreed, we shall have a claim for reimbursement of expenses in addition to the agreed compensation.
2. Our invoices are payable without deduction of any cash discounts and free of any bank charges in accordance with the agreed payment plan, and otherwise within 15 business days from the date of the invoice. Where, as a result of express agreements in individual cases, we accept cheques, we shall only do so on account of payment and likewise without permitting any cash discounts. Any discounting charges shall be borne by the Customer; we shall only acknowledge payments by cheque as discharge by the Customer of its obligations where the amounts in question have been credited to our account without reservation. We reserve the right to request reasonable payments on account and advance payments.
3. Where we are entitled to assert multiple claims against the Customer, we shall be entitled to determine to which debt the Customer's payment is credited. The Customer shall only have rights of set-off where the Customer's counterclaims have been adjudicated with res judicata effect, where they are undisputed or where we have acknowledged them in writing. The foregoing shall also apply to any assertion of rights of retention. Claims related to mutuality of contract, in particular claims for damages in respect of the costs of remediating defects or of completion, are excepted from the foregoing.
4. Where, after formation of the contract, circumstances come to our knowledge which appear to place our claims against the Customer at risk due to a lack of solvency on the part of the Customer, we shall be entitled to premise carry our delivery of such goods and services as are then still outstanding on advance payment or the furnishing of security and, following expiry to no avail of a deadline set for this purpose, we shall be entitled to rescind the contract; section VI. 5. of these Terms and Conditions shall apply mutatis mutandis.
5. In cases of payment default, the Customer shall owe default interest at the statutory rate, provided that we do not furnish evidence to the Customer of any greater amount of damages.

X. CLAIMS FOR DEFECTS

1. In the event that we have rendered goods or services which are subject to defects, the Customer must provide us the opportunity to effect subsequent performance within a reasonable time, provided that the subsequent performance is not unreasonable to the Customer in the individual case or there are particular circumstances present in the case which, upon a weighing of the parties' interests on each side, would justify immediate rescission.
2. We shall, in all cases, be entitled to choose between remediating the defect or delivering a defect-free product.
3. The Customer bears an obligation to inspect the goods and services for obvious defects which a prudent merchant would notice without further effort. Obvious defects, such as a lack of components or of documentation material, and damage to products which is discernible without undertaking further efforts must be notified to us in writing within one week of receipt of the delivery.
4. Defects which only become manifest later prior to expiry of the limitations periods for claims for defects must be notified to us in writing within one week of the Customer's discovery thereof.
5. In the event of a breach of the Customer's duty to inspect and give notice of complaints, the goods or services shall be deemed to have been approved in respect of the defect in question.
6. Claims for defects must be asserted by the Customer in writing, indicating all of the defects ascertained and the circumstances in which the defects manifested themselves.



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7. No defect shall be deemed present where an error claimed by the Customer cannot be reproduced. Where the Customer has carried out interventions with respect to components, hardware or software delivered by us, the Customer shall then only have claims for defects if the Customer furnishes evidence that its intervention was not the cause of the defect.
8. Where it is revealed that a defect asserted by the Customer does not exist, and, in particular, where an asserted defect cannot be reproduced, we shall be entitled to demand reasonable compensation for our expenditures, except where the Customer is culpable only of slight negligence.
9. Where our subsequent performance fails, where we refuse subsequent performance or where subsequent performance is unreasonable to the Customer, the Customer shall, where applicable, be entitled to assert exclusively the other statutory claims for defects (rescission, abatement of the price, contractual cover, compensatory damages or damages of frustrated expenditures). Claims for compensatory damages shall only be deemed to arise pursuant to sec. XI. of these Terms and Conditions.
10. Where the defect consists of a mere minor deviation from an agreed warranted quality, the Customer shall, at our option, be entitled only to a right of subsequent performance or to reasonable abatement of the price. Where no warranted qualities have been agreed, the same shall apply in respect of a mere minor deviation from fitness for the intended use pursuant to the contract or otherwise for such customary use as is usual in respect of goods of the same type and which the Customer is entitled to expect in light of the type of the goods.

XI. LIABILITY AND RESCISSION

1. We shall be liable for compensatory damages exclusively pursuant to the following rules:
We shall be liable on the merits for
 - intentional acts or grossly negligent acts
 - every culpable breach of material contract obligations.
2. To the extent we bear liability in cases of simple negligence, our obligation to pay compensation shall be limited as to amount to compensation of such losses as are foreseeable and typical for the contract.
3. In all further and other respects, we disclaim all liability for damage to property and pecuniary losses.
4. Excepted from our limitation of liability and disclaimer of liability is liability under the Product Liability Act and liability for injury to life, limb and/or health.
5. Where the goods or services consist of a design, damages for consequential losses shall be deemed disclaimed where the Customer causes corresponding tools or the like to be manufactured on the basis of the goods and services rendered by us or has undertaken acts which are the equivalent thereof.
6. We shall only bear liability to recover data where the Customer has ensured that lost data can be recovered with reasonable efforts. For this reason, the Customer shall be obliged to regularly back-up data and programmes at intervals which are appropriate to the application.
7. To the extent that our liability in damages is disclaimed or limited pursuant to the provisions hereinabove, the foregoing shall also extend to the personal liability of our officers and directors, workers and other employees, representatives and vicarious agents, and shall also apply to all claims for fault-based breaches in respect of contract negotiations, breaches of ancillary obligations and claims in tort (secs. 823 et seq. BGB) but not to claims pursuant to secs. 1, 4 of the Product Liability Act.

XII. PRESCRIPTION

1. Claims of the Customer shall be deemed prescribed one year from the date of commencement of the statutory prescription period. Excepted herefrom are claims under secs. 438 (1) (1), (2); 634a (1) (2) BGB.
2. Where the Customer is an entrepreneur, other contract claims based on breaches of obligations shall be deemed prescribed one year from the commencement of the statutory prescription period.



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3. The statutory prescription periods shall remain unaffected in the following cases by the provisions set forth above:
 - damages resulting from injury to life, limb or health;
 - other damages based on intentional breaches of obligations or gross negligence by us, our legal representatives or vicarious agents;
 - the right of the Customer to resile from the contract in the event of a breach for which we are liable, which does not consist of a defect of the purchased item or the works and services;
 - claims for fraudulent concealment of a defect and claims for a warranty of quality within the meaning of sec. 444 or sec. 639 BGB;
 - claims for reimbursement of expenditures pursuant to sec. 478 (2) BGB.
4. The prescription period in cases of recourse against the supplier under secs. 478, 479 BGB shall remain unaffected hereby; that statutory prescription period is five years, calculated from the date of delivery to the Customer of the defective goods.

XIII. RESERVATION OF TITLE

1. All goods delivered shall remain our sole property until such time as the receivable purchase price is paid and settled, and in the case of entrepreneurs, until such time as all receivables based on the business relationship between the Customer and us are paid and settled.
2. In the event of any balance owing under a current account, we shall be deemed to reserve title until such time as the balance owing has been settled; in case of acceptance of bills of exchange or cheques, until such time as they are redeemed.
3. The Customer is authorised to resell the goods delivered by us in the ordinary course of its business and without agreeing any exclusion of assignment. The Customer is deemed to assign to us, now, its claim based on the resale thereof, together with all ancillary rights, up to the amount of the receivable of the gross final invoice amount; in the case of agreements of the Customer with the third party in respect of current accounts, this shall apply mutatis mutandis to the balance owing claim under that current account. The Customer shall retain authorisation to collect the assigned receivable even following the assignment. Our entitlement to collect the receivable ourselves shall remain unaffected hereby. However, we undertake not to collect the receivable for so long as the Customer complies with its payment obligations with respect to the proceeds generated thereunder, does not default in making payment and, in particular, provided that no application for the opening of insolvency proceedings has been filed or the Customer has ceased to make payments. Where this is the case, the Customer undertakes that it shall disclose the assigned receivables and the debtors thereof to us and furnish us with all details needed in order to collect such receivables, deliver the associated documents to us and communicate the assignment to the debtors (third parties).
4. Any processing or conversion of the goods delivered by us by the Customer is in all cases deemed undertaken for our benefit. Where the goods are processed together with other items which do not belong to us, we shall acquire co-ownership of the new item of property pro rata based on the ratio of the value of the purchased item (gross final invoice amount) to the other processed items at the time of the processing. In all further and other respects, the same rules as apply to goods subject to retention of title shall apply to the item of property generated by such processing.
5. Where, in cases in which goods are delivered abroad, certain measures are required in the country of importation to ensure validity of our reservation of title, the Customer shall alert us thereto and shall carry out such measures at its own cost and expense. Where the law of the state of importation does not permit retention of title, but does permit us to retain other rights to the goods, we shall be entitled to exercise all rights of such kind. Where this does not result in equivalent security for our claims, the Customer shall be obliged, at its own cost and expense, to provide us with other security in respect of the delivered goods or other collateral.
6. The Customer may neither pledge nor transfer by way of security the goods subject to reservation of title and shall notify us promptly of any attachments occurring as a result of legal action by third parties.
7. We hereby undertake to release collateral and security to which we are entitled upon the Customer's request to the extent that the value of our security and collateral capable of realisation exceeds the secured receivables by more than 20%. Selection of the security to be released shall be at our discretion.

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XIV. SUB-CONTRACTING OF GOODS AND SERVICES

We are entitled to engage third parties to render the goods and services and may sub-contract the contract in whole or in part provided that this does not adversely impact the Customer's interests meriting protection.

XV. DETERIORATION IN THE CUSTOMER'S FINANCIAL STATUS

1. If, after formation of contract, we become aware of facts which call the Customer's solvency into question, we shall be entitled, prior to further performing the contract, to demand full payment or furnishing of appropriate security or, after setting a reasonable time for full payment or the furnishing of security, we may rescind the contract.
2. Facts which call the Customer's ability to make payments into question shall, in particular, be deemed to include sustained attachments or other measures of compulsory enforcement and
3. The foregoing shall also apply in the case of an application for the opening of insolvency proceedings.

XVI. FORCE MAJEURE

1. Where, based on force majeure (in particular due to shortages of raw materials, energy and manpower, or as a result of strikes, serious disruptions in transport, operational disruptions which are not the result of our fault or which are unforeseeable to us, in the event of actions of regulatory or governmental authorities for which we cannot be held responsible or other events for which we bear no fault), it is not possible for us to furnish goods/services, we shall not be obliged to render the goods/services for so long as the frustrating event continues.
2. Where frustrating events pursuant section XVI. 1. are of greater than 4 months' duration, we shall be entitled to rescind the contract if performance of the contract following such frustrating event is no longer of any interest to us. Upon request of the purchaser, we shall state following expiry of the period whether we wish to rescind the contract or to fulfil our duties to perform the contract within a reasonable time.

XVII. PROHIBITION ON ASSIGNMENT, SET-OFF AND RIGHTS OF RETENTION

1. The assignment of claims to which the Customer is entitled against us based on our business relationship is prohibited.
2. The Customer is only authorised to exercise a right of set-off and to assert rights under secs. 273, 320 BGB where the Customer's counterclaims are either undisputed or have been adjudicated by res judicata judgment. Claims related to mutuality of contract, in particular claims for damages in respect of the costs of remediating defects or of completion are excepted from the foregoing.

XIII. PLACE OF PERFORMANCE, JURISDICTION AND APPLICABLE LAW

1. The place of performance for all goods and services is Neckarsulm, unless otherwise agreed.
2. Exclusive jurisdiction and venue with respect to all claims arising out of the business relationship against merchants and legal entities under public law shall be vested in the courts of Heilbronn. However, we shall also be entitled to file suit against the Customer in any other court with legal jurisdiction thereof.
3. With respect to all business relations and the entirety of the legal relationship between the Customer and ourselves, German law shall apply exclusively, however, the United Nations Convention on the International Sale of Goods (CISG) shall have no application.