



————— An ITT Brand

**TERMS OF  
DELIVERY AND PAYMENT**

**TERMS OF DELIVERY AND PAYMENT, 1/2**

**1. SCOPE**

- 1.1 Terms of delivery as given below apply to all deliveries. Deviating or contradictory terms by the customer, even where not expressly rejected by us, are not part of the contract.
- 1.2 Our terms of delivery and payment shall apply only to companies within the meaning of § 13 BGB, or to legal entities or special funds under public law.

**2. QUOTATION - QUOTATION DOCUMENTATION - CONTRACT**

- 2.1 We reserve right of ownership and copyright for quotations, illustrations, drawings and other documentation; they may not be distributed to third parties.
- 2.2 Our quotations are not binding. A contract exists only once the order is confirmed by us in writing. Our written order confirmation will define content and size of contract.
- 2.3 Changes in the technical design of ordered goods are permitted where these do not lead to any essential operational changes or the customer can prove them to be unacceptable.
- 2.4 We will accept liability for the composition of an item only if this has been expressly stated in our order confirmation or in one of our advertisements.

**3. PRICES AND TERMS OF PAYMENT**

- 3.1 Unless stated otherwise in the order confirmation, our prices are ex works, excluding packaging; this is invoiced separately.
- 3.2 VAT is not included in our prices; it is added on the day of invoicing at the current level and listed separately.
- 3.3 Any discount requires a specific agreement in writing.
- 3.4 We reserve the right to alter our prices if, after the contract has been completed, changes in cost occur due to wage settlements or changes in the price of metal. We will document these if requested by the customer. If a new pricelist becomes valid during an agreed delivery period of more than 4 months between contract completion and delivery, we may charge the price valid on the day of delivery.
- 3.5 The customer reserves the right to hold back payment or to make counter claims only insofar as his or her counter claims have been determined to be lawful, undisputed or accepted by us.

**4. DELIVERY TIME**

- 4.1 Maintaining agreed delivery times depends on all commercial and technical questions being solved and the customer having fulfilled his or her obligations appropriately and in good time.
- 4.2 If the customer experiences default in acceptance or he or she neglects other duties to co-operate, we may demand compensation for damage incurred to date including potential additional costs. Further claims are reserved.
- 4.3 If the delivery time cannot be met due to acts of God, industrial action or other events outside our control, it will be extended appropriately. We will endeavour to inform the customer as soon as possible in this event of the beginning and the end of such circumstances.
- 4.4 If we do not deliver on time and this incurs damage to the customer, he or she may demand a flat rate compensation. This amounts to 0.5% for every week's delay up to a maximum of 5% of the value of that part of the total delivery which cannot be used in time or according to the contract due to the delay. The customer's rights to rescind the contract if the legal conditions are met remain unaffected. Further claims for default of delivery are not possible unless there is a firm deal or the interest in completion has gone.
- 4.5 Partial deliveries are permitted where acceptable to the customer.

**5. PASSAGE OF RISK, ACCEPTANCE**

- 5.1 The risk passes to the customer once the goods have left the works even with partial deliveries of where the supplier has accepted other tasks such as delivery or assembly or where the supplier has taken on payment of transport costs. Where an acceptance is to take place this affects the passage of risk significantly. It must be carried out immediately on the day of delivery, where possible on the announcement by the supplier of the willingness to accept. The customer may not refuse acceptance where there is an inessential fault.
- 5.2 If transport or acceptance is delayed or does not take place due to circumstances beyond our control the risk will pass to the customer on the day transport or willingness to accept is announced. We are authorised in this event to insure the goods and to invoice the customer for these costs.
- 5.3 If a trial run or acceptance on site have been agreed, these must be carried out within 3 months of despatch. For the acceptance, specifically agreed stipulations as well as VDI or DIN regulations for performance trials and acceptance need to be meaningfully applied. We are authorised to check the entire plant before acceptance and performance trials on site and to demand its overhaul if necessary. In addition we may carry out appropriate pre-trials.
- 5.4 Electric motors, gear boxes or other parts supplied by the customer to us for assembly with the object to be delivered will be stored at the customer's risk. The customer must insure these parts against fire, water and other damage.

**6. RESERVATION OF OWNERSHIP**

- 6.1 Our deliveries are made subject to reservation of ownership. The goods remain in our possession until all payments from the business association with the customer have been met. The reserved ownership serves as security for our claims where accounts remain unsettled.
- 6.2 The customer may re-sell delivered goods within the framework of his or her proper business procedures. However, he or she may not pawn or transfer the reserved goods by way of security.
- 6.3 In the event of a re-sale the customer will transfer all claims including all associated rights following re-sale to us at this point. This takes place regardless of whether the reserved goods were resold unprocessed or processed or in conjunction with other goods. If the re-sale takes place in conjunction with goods not belonging to us, the transfer will amount only to the extent of the value of the reserved goods. The value is in line with our sale prices.
- 6.4 As far as we, the manufacturers, are concerned, processing the reserved goods takes place in line with § 950 BGB, without compulsion. Processed goods are regarded in this context as reserved goods. If reserved goods are processed or irretrievably mixed up with objects not belonging to us, we will gain co-ownership of the new object at a ratio of the invoiced value of the reserved goods to the invoiced value of the other used goods at the time of processing or mixing up. These co-ownership rights apply as reserved goods within these conditions. The customer is obliged to advise the buyer of the reserved goods of our ownership rights.
- 6.5 The customer is authorised to collect debts following re-sale regardless of our own authority to collect debts. As long as the customer meets his payment demands appropriately, we will not assert the debt ourselves. On our request the customer must inform us of the debtors of the transferred debt and advise him or her of the transfer. We reserve our right to inform third party debtors of the transfer ourselves. The customer may not transfer the debt against third party debtors to third

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- parties or to agree a transfer ban with the third party debtor.
- 6.6 The customer is obliged to advise us as quickly as possible of a pawning or any other infringement of our security rights by third parties. The customer is obliged to hand over any documentation required by us to reserve our rights and to reimburse any costs we may incur if an intervention becomes necessary.
  - 6.7 We commit ourselves to release existing securities of our choice where their value exceeds claims to be secured by more than 25%.
  - 6.8 The customer is obliged to insure the goods sufficiently for as long as our ownership is reserved.

**7. COMPLAINTS, CLAIMS FOR DEFECTS, PERIOD OF LIMITATION**

- 7.1 The customer is requested to check the goods immediately on receipt for any faults. Complaints must be raised immediately on receipt of the goods, and no later than within 14 days of receipt, in writing. The same period applies for hidden faults from the moment of discovery. Claims do not apply where faults were not notified in time.
- 7.2 Where complaints are justified, we choose to implement corrective measures or to make a replacement delivery. If we have not rectified the fault within a reasonable period and have not provided a replacement, the customer has the right to rescind the contract or demand a reduction in the purchase price. Rescinding is not possible where we have violated our duties in a minor way.
- 7.3 Claims for defects will lapse after:
  - a) 5 years for the delivery of items which were used in the construction of a building according to their purpose and which caused faults in the building,
  - b) 1 year for the delivery of other new goods to companies,
  - c) where used goods are delivered to companies no claims for defects may be made.

The period starts once the item is delivered.  
The period according to Section 7.3 letter b) shall not apply to claims for defects by the customer arising from injury to life, limb or health, or to claims for intentional or grossly negligent breach of duty on our part or by our agents, which shall expire in accordance with the statutory provisions.
- 7.4 Claims for defects do not apply in the following circumstances: Unsuitable or improper use, faulty assembly or operation by the customer or third parties, unauthorised type of operation, natural wear and tear, faulty or careless handling, insufficient servicing, unsuitable operating resources, faulty works, unsuitable foundation soil, chemical, electro-chemical or electric effects - insofar as these are not our responsibility.
- 7.5 If the customer or a third party makes alterations retrospectively, there is no liability on our part for any consequences. The same applies to any alterations to the delivered item made without authorisation from us in advance.

**8. LIABILITY FOR DAMAGES BASED ON FAULT**

- 8.1 Our liability for damages, for whatever legal reason, in particular due to

- impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, insofar as in matters of fault, shall be limited in accordance with this Section 8.
- 8.2 We shall not be liable in cases of simple negligence of our bodies, legal representatives, employees or other agents, unless this relates to a breach of contractual obligations. Essential contractual obligations shall mean the obligation of timely delivery and installation of the goods, their freedom from legal defects and such material defects that more than only insignificantly impair their functionality or suitability for use, as well as advisory and protective duties and duties of care for the purpose of facilitating to the customer the contractual use of the goods, or for the protection of life and limb of the customer's personnel or the protection of his or her property from significant damage.
- 8.3 Insofar as, in accordance with Section 8.2, we may, in principle, be liable for damages, this liability shall be limited to damages which, when entering into the contract, we foresaw or by exercising reasonable care should have foreseen as possible consequences of breach of contract. Indirect damages and consequential damages resulting from defects in the goods shall also only be eligible for compensation if under normal use of the goods such damages can typically be expected.
- 8.4 Unless our liability for negligence is excluded pursuant to Section 8.3, our liability to pay damages and resulting further consequential damages shall be limited to an amount of EUR 1 (one) million per claim.
- 8.5 The foregoing exclusions and limitations of liability shall apply in the same extent to our organs, legal representatives, employees and other agents.
- 8.6 Insofar as we may provide technical information or act in an advisory role and this information or advice is not part of the contractually agreed scope of services, this shall take place free of charge and to the exclusion of all liability.
- 8.7 The limitations of this Section 8 shall not apply to our liability for wilful conduct, guaranteed quality features, injury to life, limb or health or to our liability under the Product Liability Act.

**9. NON-ASSIGNMENT CLAUSE**

Unless agreed to the contrary with the customer, the customer is not allowed to transfer rights from the contract to third parties without our agreement.

**10. APPLICABLE LAW, JURISDICTION**

- 10.1 Only German law applies; UN purchasing rights are excluded.
- 10.2 Our registered office is place of execution where nothing else has been stipulated in the order confirmation.
- 10.3 Place of jurisdiction is Wiesbaden, if the customer is a trader. However, we are authorised to prosecute the customer at the place of his registered office.

Effective from September 1<sup>st</sup> 2016