

General Terms and Conditions of Delivery

for Products and Services of the Electrical Industry
("Green Terms of Delivery" - GL) for use in business transactions with companies

- Status: January 2018 –

Article I: General Provisions

(1) The legal relations between the Supplier and the Purchaser in connection with the supplies and/or services of the Supplier (hereinafter referred to as "Supplies") shall be governed exclusively by these GL. General Terms and Conditions of the Purchaser shall apply only to the extent that the Supplier has expressly agreed to them in writing. The scope of the Supplies shall be determined by the concurrent written declarations of both parties.

(2) The Supplier reserves its unrestricted rights of use and exploitation under property and copyright law in respect of cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents may only be made accessible to third parties with the prior consent of the Supplier and, if the order is not placed with the Supplier, shall be returned to the Supplier without undue delay upon request. Sentences 1 and 2 shall apply mutatis mutandis to Documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier has permissibly transferred Supplies.

(3) The Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed performance features in unmodified form on the agreed equipment. The Purchaser may make a backup copy of the standard software without express agreement.

(4) Partial deliveries shall be permissible insofar as they are reasonable for the Purchaser.

(5) The term "claims for damages" in these GL shall also include claims for reimbursement of futile expenses.

Article II: Prices, terms of payment and offsetting

(1) Prices are ex works excluding packaging plus the applicable statutory value added tax.

(2) If the Supplier has undertaken the installation or assembly and unless otherwise agreed, the Purchaser shall bear, in addition to the agreed remuneration, all necessary ancillary costs such as travel and transport costs and allowances.

(3) Payments shall be made free Supplier's payment office.

(4) The Purchaser may set off only those claims which are undisputed or have been finally adjudicated.

Article III: Retention of Title

(1) The items of the Supplies (Retained Goods) shall remain the property of the Supplier until all claims to which the Supplier is entitled against the Purchaser under the business relationship have been fulfilled. If the value of all security interests to which the Supplier is entitled exceeds the amount of all secured claims by more than 20%, the Supplier shall, at the request of the Purchaser, release a corresponding part of the security interests; the Supplier shall be entitled to choose between different security interests when releasing the security interests.

(2) For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be permitted only to resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of title to the customer conditional upon the customer fulfilling its payment obligations.

(3) If the Purchaser resells the Retained Goods, it hereby assigns to the Supplier by way of security its future claims against its customers arising from the resale together with all ancillary rights, including any balance claims, without any further declarations being required. If the Retained Goods are resold together with other items without an individual price having been agreed for the Retained Goods, the Purchaser shall assign to the Supplier that part of the total price claim which corresponds to the price of the Retained Goods invoiced by the Supplier.

(4) a) The Purchaser shall be permitted to process the Retained Goods or to mix or combine them with other items. The processing shall be carried out for the Supplier. The Purchaser shall keep the resulting new item for the Supplier with the due care of a prudent businessman. The new item shall be deemed to be goods subject to retention of title.

b) The Supplier and the Purchaser agree already now that in the event of combination or mixing with other items not belonging to the Supplier, the Supplier shall in any case be entitled to co-ownership of the new item in the amount of the share resulting from the ratio of the value of the combined or mixed reserved goods to the value of the other goods at the time of combination or mixing. To this extent, the new item shall be deemed to be reserved goods.

c) The provision on the assignment of claims according to No. 3 shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed reserved goods invoiced by the Supplier.

d) If the Purchaser combines the Retained Goods with real or movable property, it shall, without any further declaration being required, also assign to the Supplier by way of security its claim to which it is entitled as remuneration for the combination, together with all ancillary rights, in the ratio of the value of the combined Retained Goods to the other combined goods at the time of combination.

(5) Until revoked, the Purchaser shall be authorized to collect assigned claims from the resale. In the event of good cause, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency of the Purchaser, the Supplier shall be entitled to revoke the Purchaser's collection authorization. In addition, the Supplier may, after prior warning and observance of a reasonable period of time, disclose the assignment by way of security, realize the assigned claims and demand disclosure of the assignment by way of security by the Purchaser to the Customer.

(6) In the event of seizures, attachments or other dispositions or interventions by third parties, the Purchaser shall notify the Supplier without delay. If a justified interest is substantiated, the Purchaser shall immediately provide the Supplier with the information required to assert its rights against the Customer and hand over the necessary documents.

(7) In the event of a breach of duty by the Purchaser, in particular in the event of default in payment, the Supplier shall be entitled to rescind the contract in addition to taking back the Retained Goods following the unsuccessful expiry of a reasonable period of grace granted to the Purchaser; the statutory provisions concerning the dispensability of setting a period of grace shall remain unaffected. The Purchaser shall be obliged to surrender the goods. The taking back or the assertion of the reservation of title or the seizure of the reserved goods by the Supplier shall not constitute a rescission of the contract, unless the Supplier has expressly declared such rescission.

Article IV: Time limits for deliveries; delay

(1) Compliance with time limits for Supplies shall be conditional upon the timely receipt of all documents to be supplied by the Purchaser, necessary permits and approvals, in particular of plans, and upon compliance with the agreed terms of payment and other obligations by the Purchaser. If these prerequisites are not fulfilled in time, the deadlines shall be extended accordingly; this shall not apply if the Supplier is responsible for the delay.

(2) If the failure to meet the deadlines is due to

a) force majeure, e.g. mobilization, war, acts of terrorism, riots, or similar events (e.g. strike, lockout),

b) virus and other attacks by third parties on the Supplier's IT system, insofar as these have occurred despite the usual care with regard to protective measures,

c) obstacles due to German, US-American and other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which the Supplier is not responsible, or

d) failure to deliver to the Supplier in due time or in due form, the time limits shall be extended appropriately.

(3) If the Supplier is in default, the Purchaser may, provided it can credibly demonstrate that it has suffered a loss as a result, claim compensation of 0.5% for each full week of default, but in no case more than a total of 5% of the price of that part of the Supplies which, owing to the default, could not be used for the intended purpose.

(4) Claims for damages by the Purchaser due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed Supplies, even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of liability based on intent, gross negligence or injury to life, body or health. The Purchaser may withdraw from the contract within the scope of the statutory provisions only if the Supplier is responsible for the delay in delivery. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

(5) The Purchaser shall be obliged to declare, at the Supplier's request and within a reasonable period of time, whether it intends to rescind the contract due to the delay in delivery or whether it insists on delivery.

(6) If dispatch or delivery is delayed at the Purchaser's request by more than one month after notification of readiness for dispatch, the Purchaser may be charged, for every additional month or part thereof, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The contracting parties shall be at liberty to prove higher or lower storage costs.

Article V: Transfer of risk

(1) The risk shall pass to the customer as follows, even in the case of carriage paid delivery:

a) In the case of delivery without installation or assembly, when it has been brought to the dispatch or has been collected. At the request and expense of the Purchaser, the delivery shall be insured by the Supplier against the usual transport risks;

b) In the case of delivery with erection or assembly, on the day of taking over in its own or, if agreed, after successful trial operation.

(2) If the dispatch, delivery, commencement, performance of erection or assembly, takeover in own works or, if agreed assembly, the taking over in the own works or the trial run is delayed for reasons for which the Purchaser is responsible, or if the Purchaser is in default of acceptance for other reasons, the risk shall pass to the Purchaser.

Article VI: Installation and assembly

Unless otherwise agreed in writing, the following provisions shall apply to installation and assembly

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1. the Purchaser shall undertake and provide in due time and at its own expense:

a) all earthwork, construction work and other ancillary work not related to the trade, including the and auxiliary workers, building materials and tools required for this purpose,

b) the commodities and materials required for assembly and commissioning, such as scaffolding, lifting equipment and other devices, fuels and lubricants,

c) energy and water at the point of use including connections, heating and lighting,

d) sufficiently large, suitable, dry and lockable rooms at the assembly site for the storage of machine parts, apparatus, materials, tools, etc. and appropriate and adequate work and recreation rooms for the assembly personnel, including sanitary including sanitary facilities appropriate to the circumstances; furthermore, the Purchaser shall take such measures as are necessary to protect the property of the Supplier and of the same measures as he would take to protect his own property, if the Supplier had not own property,

e) protective clothing and protective devices required as a result of the special circumstances of the assembly site. Before the start of the assembly work, the Purchaser shall provide the necessary information on the location of concealed power, gas, water lines or similar or similar installations as well as the necessary static data without being requested to do so.

(3) Prior to the start of assembly or erection, the supplies and objects necessary for the start of the and objects required for the start of the work must be at the installation or assembly site and all site and all preparatory work must have progressed to such an extent that assembly or erection can be commenced as agreed and carried out without interruption. Access roads and the installation or assembly site must be leveled and cleared.

(4) If the installation, assembly or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear reasonable the costs of waiting time and any additional travel required by the Supplier or the assembly personnel.

(5) The Purchaser shall immediately certify to the Supplier on a weekly basis the duration of the working time of the erection personnel as well as the completion of the erection, assembly or commissioning.

(6) If the Supplier demands acceptance of the delivery after completion, the Purchaser shall carry this out within two weeks. Acceptance shall be deemed to have taken place if the Purchaser allows the two-week period to elapse or if the Supplies have been put to use, possibly after completion of an agreed test phase.

Article VII: Acceptance

The Purchaser may not refuse to accept deliveries due to insignificant defects.

Article VIII: Material defects

The Supplier shall be liable for material defects as follows:

(1) All those parts or services which show a material defect shall, at the Supplier's discretion, be repaired, replaced or provided again free of charge, if the cause of the defect already existed at the time of the passing of risk.

(2) Claims for subsequent performance shall become statute-barred 12 months after the statutory commencement of the limitation period; the same shall apply to rescission and reduction. This period shall not apply: insofar as the law pursuant to §§ 438 para. 1 no. 2 (buildings and items for buildings), 479 para. 1 (right of recourse) and 634a para. 1 no. 2 (construction defects) BGB (German Civil Code); in case of intent; in case of fraudulent concealment of the defect as well as in case of non-compliance with a quality guarantee. Claims for reimbursement of expenses of the purchaser according to § 445a BGB (recourse of the seller) shall also become statute-barred 12 months after the statutory commencement of the limitation period, provided that the last contract in the supply chain is not a purchase of consumer goods. The statutory provisions on suspension of expiry, suspension and recommencement of the periods shall remain unaffected.

(3) Notices of defects by the purchaser must be made in writing without delay.

(4) In the event of claims based on defects, payments by the Purchaser may be withheld to an extent that is in reasonable proportion to the material defects that have occurred. The customer shall not have a right of retention if its claims for defects are time-barred. If the notification of defects is unjustified, the Supplier shall be entitled to demand reimbursement from the Purchaser for the expenses incurred by him.

(5) The Supplier shall be given the opportunity to remedy the defect within a reasonable period of time.

(6) If the subsequent performance fails, the Purchaser may - without prejudice to any claims for damages pursuant to No. 10 - rescind the contract or reduce the remuneration.

(7) Claims for defects shall not exist in the case of only insignificant deviations from the agreed quality, in the case of only insignificant impairments of the usability, in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable foundation soil or due to or which arise due to special external influences which are not assumed in the contract as well as in the case of non-reproducible software errors. If improper modifications, installation/removal or repair work by the customer or third parties are carried out improperly by the purchaser or third parties, there shall likewise be no claims for defects.

(8) Claims of the Purchaser for expenses incurred for the purpose of supplementary performance shall be excluded to the extent that the expenses are increased, the object of the delivery has subsequently been taken to a place other than the Purchaser's branch office, unless the transfer is in accordance with its intended use. This shall apply mutatis mutandis to the Purchaser's claims for reimbursement of expenses pursuant to Sec. 445a BGB (German Civil Code) (Seller's right of recourse), provided that the last contract in the supply chain is not a sale of consumer goods.

(9) The Purchaser's right of recourse against the Supplier pursuant to Sec. 445a BGB (recourse of the of the Seller) shall exist only insofar as the Purchaser has not entered into any agreements with his customer that go beyond the statutory claims for defects.

(10) Claims for damages by the Purchaser due to a material defect shall be excluded. This shall not apply in the event of fraudulent concealment of the defect, non-compliance with a quality guarantee, injury to life, limb or health and in the event of willful misconduct. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions. Further claims or claims other than those provided for in this Art. VIII on account of a material defect shall be excluded.

Article IX: Industrial Property Rights and Copyrights; Defects in Title

(1) Unless otherwise agreed, the Supplier is obliged to provide the delivery only in the country of the place of delivery without infringement of industrial property rights and copyrights of third parties (hereinafter: property rights). If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the period stipulated in Art. VIII No. 2 as follows

(a) The Supplier shall, at its option and expense, either obtain a right of use for the Supplies concerned, or modify them so that the IPR is not infringed or replace them. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to the statutory rights of rescission or reduction.

b) The Supplier's obligation to pay damages shall be governed by Art. XII.

c) The aforesaid obligations of the Supplier shall only exist to the extent that the claims asserted by the third party without undue delay in writing, does not concede the existence of an infringement and reserves to the Supplier the right to take all defense measures and settlement negotiations. If the Purchaser discontinues the use of the Supplies in order to minimize the damage or for other good cause, it shall be obliged to inform the third party that the discontinuation does not constitute an acknowledgement of the cessation of use is not connected with any acknowledgement of an infringement of property rights.

(2) Claims of the purchaser shall be excluded insofar as the purchaser is responsible for the infringement of the property right.

(3) Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by an application not foreseeable by the Supplier or by the fact that the Supplies have been modified by the Purchaser or have been used in combination with other products not provided by the Supplier.

(4) In the event of infringements of industrial property rights, the claims of the Purchaser set out in No. 1a) shall be governed by the provisions of Art. VIII No. 4, 5, 8 and 9 shall apply accordingly.

(5) In the event of other defects of title, the provisions of Art. VIII shall apply accordingly.

(6) Further claims or claims other than those provided for in this Art. IX against the Supplier and its agents on account of a defect in title are excluded.

Article X: Reservation of performance

(1) Performance of the contract shall be subject to the proviso that no impediments arise due to German, U.S. or other applicable national, EU or international regulations of foreign trade law as well as embargoes or other sanctions.

(2) The Purchaser shall be obliged to provide all information and documents required for the export, transfer or required for the export, transfer or import.

Article XI: Impossibility; Adjustment of Contract

(1) If delivery is impossible, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be used for the intended purpose. This limitation shall not apply in cases of intent, gross negligence or injury to life, limb or health; the Purchaser shall not be liable for the injury to life, limb or health; this does not imply a change in the burden of proof to the disadvantage of the purchaser. The right of the customer to withdraw from the contract shall remain unaffected.

(2) Insofar as events within the meaning of Art. IV No. 2 a) to c) substantially change the economic significance or the economic importance or the contents of the Supplies or substantially affect the Supplier's business, the contract shall be adapted appropriately in good faith. If this is not economically justifiable, the Supplier shall be entitled to withdraw from the contract. The same shall apply if required export licenses are not granted or cannot be used. If the Supplier exercises his right to withdraw from the contract, he must notify the customer immediately, even if an extension of the delivery period was initially agreed with the customer.

Article XII: Other Claims for Damages

(1) Unless otherwise provided for in these GL, any claims for damages for any legal reason whatsoever, in particular for breach of duties arising from the obligation and tort are excluded.

(2) This shall not apply to the extent that liability exists as follows:

a) according to the product liability law,

b) in case of intent,

c) in the event of gross negligence on the part of owners, legal representatives or executive employees,

- d) in case of fraudulent intent,
- e) in case of non-compliance with an assumed guarantee,
- f) for culpable injury to life, body or health, or
- g) due to culpable violation of essential contractual obligations.

The claim for damages for the violation of essential contractual obligations is limited to the foreseeable damage typical for the contract, unless other of the aforementioned cases.

(3) The above provisions do not imply a change in the burden of proof to the detriment of the customer.

Article XIII: Place of jurisdiction and applicable law

(1) If the Purchaser is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Supplier's registered office. However, the Supplier shall also be entitled to bring an action at the place of the Purchaser's registered office.

(2) This contract, including its interpretation, shall be governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Article XIV: Binding force of the contract

The contract shall remain binding in its remaining parts even if individual provisions are legally invalid. This shall not apply if adherence to the contract would represent an unreasonable hardship for one of the parties.

In the event of any inconsistency between the English and German versions of the foregoing documents, the German version shall prevail and be legally binding.