

Humboldt Wedag GmbH***Terms and conditions for supplying machines, equipment and original parts for foreign transactions*****For use in relation to:**

1. a party who acts as a commercial or self-employed person when concluding a contract (entrepreneur);
2. public law legal entities or a special public law fund.

I. Introduction

1. These terms shall form the basis for all supplies and services along with any separate contractual agreements. If the orderer's general terms and conditions of purchase differ, they shall not become the content of the contract when the order is accepted. In the absence of a special agreement, a contract materialises with the written order confirmation of the supplier.
2. The supplier shall reserve itself the ownership rights and copyrights to samples, cost estimates, quotations, drawings and similar information of a physical or non-physical type, even in electronic form. They may not be made available to third parties.
3. The supplier shall only make information and papers designated by the orderer as confidential available to third parties with its permission.

II. Price and Payment

1. In the absence of a special agreement, prices shall be from FCA manufacturer's factory in accordance with the last valid version of Incoterms including loading the goods in the factory and excluding packaging. The statutory value-added tax shall be added to the price. The seller shall be entitled to adjust the prices in accordance with wages and raw material prices with long-term contracts and supply schedules.
2. In the absence of a special agreement, payment shall be made as follows without deducting anything from the supplier's account: 1/3 down payment after receiving the order confirmation, 1/3 as soon as the orderer has been told that the main parts are ready to be shipped and the rest within one month after passing risk, however no later than two months after reporting that they are ready to be shipped.
3. The orderer shall only be entitled to the right to retain payments or set them off against counterclaims if its counterclaims are undisputed or have been declared final and conclusive.

III. Delivery Period and Delay in Delivery

1. The delivery period is in the agreements of the contractual parties. The prerequisite for the supplier to comply with them all commercial and technical questions being answered between the contractual parties and the orderer meeting all of the obligations it is responsible for, such as obtaining required official certificates and/or permits or making a down payment. If this is not the case, the delivery period shall be extended correspondingly. This shall not apply to the extent that the supplier is responsible for the delay.
2. Complying with the delivery period shall be under the reservation of the supplier being properly supplied in due time. The supplier shall announce any foreseeable delays as soon as possible.
3. The delivery period shall be complied with if the subject matter of delivery has left the supplier's facilities by the time it expires or it has been announced that it is ready to be shipped. If it supposed to be officially accepted, the date of official acceptance shall be authoritative with the exception of justified rejection of official acceptance, or alternately the report of it being ready to be shipped.
4. If shipping or officially accepting the subject matter of delivery is delayed for reasons the orderer is responsible for, it shall be charged the costs incurred by the delay beginning one month after reporting that it is ready to be shipped or officially accepted.
5. If non-compliance with the delivery period may be attributed to force majeure, labour conflicts or other events beyond the supplier's sphere of influence, the delivery period shall be appropriately extended. The supplier shall communicate the beginning and end of said circumstances to the orderer as soon as possible.

6. The orderer may withdraw from the contract without setting an extension if the entire performance is finally impossible for the supplier before passing risk. Beyond this, the orderer may withdraw from the contract if executing a part of the delivery becomes impossible with an order and it has a justifiable interest in rejecting the partial delivery since it cannot use it. If this is not the case, the orderer has to pay the contractual price attributable to the partial delivery. The same shall apply if the supplier is incapable of complying. Otherwise, Section VII.2 shall apply. If supply is impossible or if the supplier is incapable during default in acceptance or if the orderer is solely or predominantly responsible for these circumstances, it shall remain obliged to provide counterperformance.
7. If the supplier comes into arrears and if the orderer incurs damage from this, it shall be entitled to demand a lump-sum compensation for liquidated damage resulting from the delay and excluding other claims. It shall be 0.5% for each full week of the delay, however a maximum of 5% of the value of the part of the overall delivery that cannot be used in due time or not contractually as a result of the delay. If the orderer sets the supplier an appropriate extension for performance after the date of due payment and taking the legal exceptions into consideration and if this extension is not complied with, the orderer shall be entitled to withdraw within the framework of the legal regulations. Other claims from default in delivery shall be exclusively determined pursuant to Section VII.2 of these terms and conditions.

IV. Passing Risk and Official Acceptance

1. Risk passes over to the orderer when the subject matter of delivery has left the factory even if partial deliveries are made or the supplier has assumed other performance such as shipping expenditures or delivery and installation. To the extent that official acceptance has to be done, this shall be authoritative for passing risk. It has to be done without delay at the date of official acceptance or alternately after the supplier reports that the performance is ready for official acceptance. The orderer may not reject official acceptance if there is a non-essential defect.
2. If shipping or official acceptance is delayed or does not occur due to circumstances that may not be attributed to the supplier, the risk shall pass over to the orderer from the day of reporting readiness to ship or do official acceptance. The supplier shall take out the insurance policies that the orderer requests at its account.
3. Partial deliveries shall be permissible to the extent that they are reasonable for the orderer.

V. Reservation of Title

1. The supplier shall reserve itself the right to the ownership of the subject matter of delivery until all payments from the supply contract have been received.
2. The supplier shall be entitled to insure the subject matter of delivery against theft, breakage, fire, water and miscellaneous damage at the orderer's account assuming the orderer cannot certify that it has taken out the insurance itself.
3. The orderer may neither dispose of or pledge the subject matter of delivery nor pass title as collateral. It has to inform the supplier if it is pledged or seized or otherwise disposed of by third parties without delay.
4. If the orderer acts in a manner contrary to the contract, especially if it comes into arrears with payment, the supplier shall be entitled to take back the subject matter of delivery after a warning and the orderer shall be obliged to issue it.
5. The supplier may only demand the subject matter of delivery based upon the reservation of title if it has withdrawn from the contract.
6. A petition for initiating insolvency proceedings shall entitle the supplier to withdraw from the contract and demand that the subject matter of delivery be returned immediately.
7. Should it be necessary to ensure the reservation of title to include this reservation in a register or the commercial books of the orderer, it shall undertake all necessary steps to implement these regulations and certify this to the supplier. It shall correspondingly label the property of the supplier if necessary.

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The supplier shall provide a warranty for quality and legal defects in the delivery excluding other claims as follows under the proviso of Section VII:

Quality Defects

1. All parts that prove to be defective as a result of a circumstances before passing risk shall be repaired at no charge or replaced without defects at the supplier's choice. The supplier shall be informed without delay in writing when said defects are discovered. Replaced parts become the supplier's property.
2. The orderer has to give the time and opportunity required for making all repairs and replacements that appear necessary to the supplier after making arrangements with the supplier. Otherwise, the supplier shall be exempted from the liability for the consequences incurred. The orderer shall only be have the right to correct the defect itself or to have it repaired by third parties and demand the reimbursement of the necessary expenditures from the supplier in urgent cases of company safety being endangered or to avert disproportionately great damage, where the supplier shall be informed immediately.
3. The supplier shall bear the costs of the replacement part including shipping from the immediate costs incurred from repair or replacement to the extent that the complaint turns out to be justified. Beyond this, it shall bear the costs of removal and installation and the costs of providing any assembly engineers or helpers that may be necessary including travelling expenses to the extent that the supplier is not disproportionately burdened.
4. The orderer shall have a right to withdraw from the contract in the framework of the legal regulations if the supplier allows an appropriate extension that it was set for repair or replacement due to a quality defect to expire unsuccessfully taking the legal exceptions into consideration. If there is only an insignificant defect, the orderer shall only be entitled to diminution of the contractual price. The right to diminution of the contractual price shall otherwise be ruled out. Other claims are determined pursuant to Section VII. 2 of these terms and conditions.
5. Warranty shall in particular not be assumed in the following cases: unsuitable or improper use, not observing the condition and the supplier's service instructions, defective assembly or start-up by the orderer or third parties, natural wear and tear, defective or neglectful treatment, improper service, unsuitable operating resources, defective construction work, an unsuitable foundation, chemical, electrochemical or electrical influences, assuming that the supplier is not responsible for them.
6. If the orderer or a third party repairs improperly, the supplier shall not be liable for the consequences incurred. The same shall apply to changes in the subject matter of delivery done without the prior permission of the supplier.

Legal Defects

7. If using the subject matter of delivery leads to infringing upon industrial property rights or copyrights in the country of receipt, the supplier shall procure the orderer the right to further use at its costs or modify the subject matter of delivery in a fashion reasonable for the orderer so that the patent infringement no longer exists. If this is not possible at economically appropriate conditions or in an appropriate period of time, the orderer shall be entitled to withdraw from the contract. The supplier shall also be entitled to a right to withdraw from the contract under the conditions specified. Beyond this, the supplier shall indemnify the orderer of undisputed claims of the holder of the patent or claims of the holder of the patent declared final and conclusive.
8. The supplier's obligations specified in Section VI. 7 shall be conclusive under the proviso of Section VII.2 for the case of protective rights or copyrights being infringed upon. They shall only be exist if
 - the orderer informs the supplier without delay of infringements on protective rights or copyright asserted,
 - the orderer shall support the supplier to an appropriate extent in averting the claims asserted or make it possible for the supplier to do modification pursuant to Section VI. 7,

- the supplier is reserved all defensive measures including out-of-court settlements,
- the legal defect may not be attributed to an instruction of the orderer, and
- the legal infringement was not caused by the orderer changing the subject matter of delivery without authorisation or in a fashion that is not in accordance with the contract.

VII. Liability

1. If the orderer cannot use the subject matter of delivery in conformity with the contract at the supplier's fault due to a failure in or defective execution of proposals and advice given before or after concluding the contract or from violating other incidental contractual obligations, especially the instruction for operating and servicing the subject matter of delivery, the regulations of Sections VI and VII.2 shall apply correspondingly excluding further claims of the orderer.
2. The supplier shall only be liable for damage not incurred on the subject matter of delivery itself regardless of the legal grounds:
 - a. with intent,
 - b. with gross negligence of the holder / the executive bodies or managing employees,
 - c. with culpable violation of life, limb or health,
 - d. with defects that is maliciously concealed or whose absence is guaranteed,
 - e. with defects in the subject matter of delivery to the extent that it shall be liable for persons or property damage to privately used objects pursuant to the Produkthaftungsgesetz (the Product Liability Act).
3. With culpable violation of essential contractual obligations, the supplier shall even be liable with gross negligence of nonmanaging employees and with slight negligence, however limited in the latter case to damage typical of the contract that could have reasonably been foreseen. Other claims shall be ruled out.

VIII. Limitation of Actions

All of the orderer's claims, regardless of the legal grounds, shall become statute-barred in 12 months. The legal periods shall apply to claims to compensation for damage pursuant to Section VII. 2 a - e. They shall also apply to defects of a building structure or delivery items that were used for a building structure in accordance with their normal use and that caused their inadequacy.

IX. Software Use

To the extent that software is included in the scope of delivery, the orderer shall be conceded a non-exclusive right to use the software supplied including its documentation. It shall be handed over for use on the subject matter of delivery intended for it. It shall be prohibited to use the software on more than one system. The orderer may only copy, revise or translate the software or transform it from the object code to the source code to the extent allowed by the law (Section 69 a ff. of Urheberrechtsgesetz - the Copyright Act). The orderer shall not remove the manufacturer's information, in particular copyright notices, or change them without the prior express permission of the supplier. All other rights to the software and the documentations including copies shall remain with the supplier or software supplier. It shall not be permissible to issue sublicenses. Supplying software to third countries shall require the written permission of the supplier.

X. Governing Law and Venue

1. The authoritative law of the Federal Republic of Germany shall exclusively apply to all legal relations between the supplier and orderer excluding the UN Convention on the International Sale of Goods.
2. The venue shall be the court with jurisdiction for the principal place of business of the supplier. However, the supplier shall be entitled to lodge action at the headquarters of the orderer.