

General Terms Of Business

I. Validity

The following conditions exclusively apply to our supplies and services. Consequently, they apply likewise to all future business even if they are not expressly agreed again. Different conditions, including those of the client, are not binding on us unless we have accepted them expressly and in writing.

II. Quotations

1. Our quotations are subject to alteration. Our written confirmation of an order is definitive for the volume of our supplies. If our quotation is tied to a specific time limit and is accepted within that limit and if we have not yet confirmed the order, our quotation for the volume of supply is applicable. Any oral agreements and modifications must be agreed to by us in writing.
2. We reserve the right to make modifications to the plans, drawings and descriptions of products with technical details etc. accompanying the quotations. We reserve the rights of ownership and copyright in respect of estimates, installation proposals, documentation, drawings, designs and other documents. They may not be made available to third parties without our express agreement in writing.
3. The client assumes sole responsibility for the documents that he has to supply, such as drawings, templates, models and the like. The client assumes responsibility for ensuring that the design drawings or similar documents supplied by him do not infringe the trademark rights of third parties. The supplier is under no obligation to the client to check whether any trademark rights or similar belonging to third parties are infringed if the work is carried out in accordance with the drawings supplied by the client. If, nevertheless, the supplier is held to be liable, the client must indemnify him.
4. Product documentation bearing an earlier date than that of current documentation loses its validity on presentation of the up-to-date documentation and, in all cases six weeks after the quotation date, at the latest. The most recent version of our documentation is effective.

III. Prices and payments

1. Accounts are payable within the stated payment period.
2. Unless specifically agreed otherwise, prices are valid FCA Giessen, Stolzenmorgen 27 – Incoterms® 2010, plus packaging. VAT at the appropriate official current rate must be added to the prices.
3. The client may offset counter claims only if they are uncontested or legally valid.
4. If the client falls into arrears the supplier is entitled to charge interest from the date on which the arrears begin, at the interest rate for open current account credit levied by the supplier's commercial bank, plus turnover tax (Umsatzsteuer).
5. Unless specifically agreed otherwise, in the case of particular specifications and special individual specifications a third of the value of the commission plus VAT at the official rate is due – as payment on account – when the order is placed.

IV. Delivery times

1. The delivery period begins when the confirmation of the order is dispatched, but not before the client produces the necessary documentation, permits and/or authorisation.
2. The delivery period is deemed to be observed if the object to be delivered has left the factory by the expiry of the period or if the client has been informed that the object is ready for dispatch.
3. The delivery period will be extended, depending on the measures taken, in the context of industrial disputes, in particular strike and lock-out, and also if unforeseen obstacles beyond the supplier's control arise, in as far as it is demonstrated that such obstacles are exerting a measurable influence on the completion or delivery of the object to be supplied. This applies also if the conditions affect sub-contractors. The conditions described above are also not the responsibility of the supplier if they arise in the course of a delay that has already occurred. In severe cases, the supplier must inform the client as soon as possible about the beginning and end of such obstacles.
4. If at the client's request the dispatch of the goods is delayed, the supplier is entitled to dispose of the ordered object elsewhere and to supply the after an appropriate delivery date has been set and has expired or client to withdraw from the contract. The client cannot demand the return of any payments made on account for orders with particular specifications and with special individual specifications – as described in section III, paragraph 6 above. The client must reimburse the supplier in respect of any losses incurred by the supplier that arise as a result of a distress sale.
5. The observation of the delivery date presupposes that the client fulfils his contractual obligations. The supplier remains entitled at all times to fulfil part of the deal.

V. Receipt and transference of risk

1. Risks are transferred to the client together with the dispatch of the goods to be delivered, at the latest; this applies also if partial deliveries are made or if the supplier has accepted responsibility for other matters, such as freight costs or transportation and installation. In the case of minor contractual infringements, in particular minor shortcomings, the client is not, however, entitled in this instance to withdraw from the contract. If, following failure to remedy the problem, the client opts to withdraw from the contract he is not entitled to claim compensation on account of the deficiency. If, following failure to remedy the problem, the client opts for compensation, the goods remain with the supplier.
2. The client is responsible for insuring the goods supplied and for settling damage in transit. At the client's request, the supplier will take out transit insurance in the client's name. The supplier is then at liberty to choose an insurer. The supplier will provide packaging appropriate to the mode of dispatch. Unless specifically agreed otherwise, the client bears the costs of packaging the goods supplied.
3. If dispatch is delayed for reasons for which the client is responsible, risks are transferred to the client on the day on which the supplier is ready to dispatch; at the client's request and at his expense, however, the supplier is obliged to effect the insurance that the client requires.
4. The client must accept delivered goods even if they have minor deficiencies notwithstanding the rights listed in the section entitled 'Liability for deficiencies in the supplies and warranty'.

VI. Enlarged and extended retention of title

1. Our deliveries are effected exclusively under retention of title. The supplier reserves the rights to the ownership of the delivered item until all the supplier's claims on the client arising from the business connection have been met, including also claims arising in the future from contracts entered into at the same time or later. This also applies if the supplier's single or totalled claims have been incorporated and if a statement of account is struck and accepted. Conduct in breach of the contract on the part of the client, in particular default, entitles the supplier, after he has issued a reminder, to the return of the goods supplied and the client is obliged to surrender the goods. Provided consumer credit legislation does not apply, recovery and distraint of the goods by the supplier does not mean withdrawal from the contract unless the supplier has expressly declared this in writing. In the case of distraint or other interventions by a third party, the client must inform the supplier in writing, without delay. In the case of conduct in breach of the contract on the part of the client, in particular default, the supplier reserves the possibility to continue to process and fulfil the terms of the contract only when the client has satisfied all the obligations owed to the supplier, independent of any particular contract. The supplier is not liable to comply with the contract if the possibility of fulfilling the contract is adversely affected by conduct in breach of the contract on the part of the client.
2. The client is entitled to resell the item supplied in the ordinary course of business. He transfers to the supplier, however, all claims and all ancillary rights against the buyer or against third parties that accrue to him from the resale. Following the transfer, the supplier is entitled to collect these claims. The supplier's authority to collect the claims himself remains unaffected by this; the supplier, however, undertakes not to collect the claims as long as the client meets his obligation to make payments in accordance with the contract. The supplier can demand that the client shall inform him of the transferred claims and the parties liable for the claims, shall give full details of the information necessary to realise them, shall provide the accompanying documentation and shall inform the parties liable, of the transfer. If the item supplied is sold together with other goods that do not belong to the supplier, the client's claim on the buyer – amounting to the delivery price agreed by the supplier and the client – is deemed to have been transferred.
3. The supplier undertakes to release the security to which he is entitled to the extent that its value does not exceed the claims to be covered by more than 20% in as far as these claims have not yet been discharged.
4. The client may neither pledge the item supplied nor assign it as security. In the case of distraint, confiscation and any other acts of disposal undertaken by a third party he must inform the supplier of this without delay.
5. The retention of title and the sureties to which the supplier is entitled remain valid until he is wholly released from the contingent liabilities that the supplier incurred in the client's interests.

VII. Liability for Defects in the Delivery, Rights arising from Defects

1. Deficiencies in one part of a delivery cannot lead to a complaint about the whole delivery. Illustrations, measurements and weights are without obligation. In respect of the nature of the goods, the supplier's description of the product alone is deemed to be valid. Public statements, recommendations and advertising do not represent a contractual description of the nature of the goods. Goods produced in accordance with the client's own instructions will not be accepted for return in any circumstances, once production work has begun. Cancellation of an order of goods that have been specially made is not possible in any circumstances. The client accepts liability for the noninfringement of the rights of third parties on account of the use of submitted drawings, models and the like.

2. In the case of justified claims that have been accepted by the supplier, all the parts as defined below may, at his discretion, be either repaired or replaced at his choice; this applies to parts that prove to be unusable or considerably impaired in their usefulness within the first 1500 hours of operation or within six months of delivery – i.e. from the date of delivery of the item supplied as the result of circumstances existing before the transfer of risks – in particular, as the result of defective construction, poor materials or inadequate equipment. If the supplier's attempts to repair or replace the defective part finally come to nothing the client may, as a matter of principle and at his choice, demand either a reduction in the price (decrease) or cancellation of the contract (withdrawal).

3. Complaints concerning obvious defects are to be made by the ordering party to the carrier without delay, 10 days after receipt of the merchandise at the latest. In participating in discussions about the complaint, the supplier does not, however, waive his right to raise a plea in respect of delay. Damaged deliveries must be examined by the carrier or the forwarding agent once the damage has been detected. The return of goods about which a complaint has been made may be undertaken only with the supplier's agreement. The supplier reserves the right to levy a charge for the expense the supplier, if this is reasonable. Compensation is limited to the difference between the selling price of an item free from defects and the value of the defective item.

4. The assertion of claims for defects in the case of used devices is excluded for damage resulting from the following ground: inappropriate or improper use, incorrect installation or operation by the client or third parties, natural wear and tear in parts subject to wear, particularly in ball bearings, incorrect or negligent handling, inappropriate production facilities, chemical, electrochemical or electrical effects provided they are not attributable to a fault on the supplier's part. The supplier is likewise not liable if the client or third parties carry out alterations or repairs to the goods without the permission of the supplier.

5. To enable the supplier to rectify any deficiencies that at his discretion he finds reasonable and necessary, the client must, in agreement with the supplier, provide him with the necessary time and opportunity; otherwise the supplier is released from his liability for deficiencies. Only in cases of emergency, if the safety of the company is threatened or if it is necessary to prevent disproportionately greater damage, has the client the right to rectify the deficiency himself or have the deficiency repaired by a third party and to demand that the supplier shall reimburse the expenses necessarily incurred; in such cases the supplier has to be notified immediately.

6. The supplier bears the costs of the replacement that arise directly from the rectification of deficiencies or replacement – provided the complaint proves to be justified. Unless specifically agreed otherwise, the client bears all other costs and, in particular, all forwarding charges.

7. In the case of minor breaches of duty arising from negligence, the supplier's liability is restricted to the predictable, contractually standard damages in accordance with the nature of the goods. This applies also to minor breaches of duty arising from negligence on the part of the supplier's legal agent or vicarious agent. In the case of insignificant minor breaches of duty arising from negligence, the supplier is not liable in respect of contractors. The above limits to liability do not affect the client's rights under product liability. In addition, the limits to liability do not apply in the cases where the supplier is liable: physical injury or damage to health or the client's loss of life.

8. If the client receives inadequate installation instructions the supplier is simply obliged to provide installation instructions that are free of defects. This applies only if the faulty installation instructions constitute an obstacle to the correct installation.

9. All rights arising from defects are deemed to be statute barred 12 months after the passing of the risk.

10. The warranty period within the scope of repairs for exchanged or reconditioned parts amounts 6 months or 1000 working hours after the date of invoice. A warranty case does not extend or renew the warranty period.

VIII. Impossibility of performance, adaptation of the contract, other rights to compensation

1. In so far as delivery is impossible, the client is entitled to demand compensation unless the supplier is not responsible for the impossibility of performance. The client's right to compensation is, however, limited to 10% of the value of the part of the delivery that cannot be put into appropriate operation because of the impossibility of performance. This limitation does not apply in so far as obligatory liability applies, in cases of action with intent, gross negligence or because of injury to life, limb or health. A modification of the burden of proof to the disadvantage of the client is not involved in this. The client's right to withdraw from the contract is not affected by this.

2. In the case of unforeseen events, as described in section IV of the General Terms of Business, the contract will be adapted, as appropriate, in as much as unforeseen events materially effect the commercial relevance or the efficiency of performance or have a material effect on the client's business and also in the case of impossibility of performance that subsequently comes to light. In as much as this is economically unreasonable, the supplier is entitled to withdraw from the contract wholly or in part. The client has no rights to damages in the case of such a withdrawal. If the supplier wishes to exercise his right to withdraw he must, on realising the consequences of the event, inform the client immediately; this also applies if an extension of the delivery date had first been agreed with the client.

3. The client's right to damages and right of indemnity (hereafter claims for damages) for whatever reason, in particular, on account of a breach of duty deriving from contractual obligation and from actionable torts, are excluded.

4. This does not apply in as much as there is conclusive liability, for example, under product liability legislation (Produkthaftungsgesetz), in cases of intent, of gross negligence, injury to life, limb or health or because of infringement of substantial contractual obligations; it is limited, however, to contractually standard, predictable damages in so far as there is no intent or gross negligence and no liability for injury to life, limb or health. No modification of the burden of proof to the client's disadvantage is involved in the above provisions.

5. In so far as the client is entitled to claims for compensation, in accordance with the previous regulation, these lapse with the expiry of the limitation period applicable to claims for material defects, in accordance with section VII, no. 9. Statutory regulations apply to claims for material defects made under the law governing product liability (Produkthaftungsgesetz).

IX. Special conditions for processing contracts for spindles, tools and other products (completion, reconditioning, adaptation or restoration)

1. The processor accepts no liability for the performance of materials supplied to him. His rights to payment remain unaffected by this. If the materials become unusable through the fault of the client, both the client's right to compensation and, if applicable, the client's right to damages lapse incurred.

2. The processor/supplier is obliged to repair the goods he supplies either himself or by third parties.

3. The client must place orders in writing. The client must ensure that orders and, in particular, orders for repair, emanating from his company are placed only by authorised people who are entitled to sign such orders. If unauthorised people in the client's firm place orders with the supplier and the client then declares the order to be null and void, the client must indemnify the supplier and he must reimburse the supplier if the supplier has already incurred costs in fulfilling the order.

4. If the client wishes to receive an estimate of the cost before repairs, alterations or the like are carried out he must ask for one expressly, in writing, when placing his order for repair. If the client does not ask for an estimate of the cost, repairs, especially, will be carried out and charged for a time and material basis. The client will be charged a fee for the preparation of an estimate of costs; the fee is to be determined by the supplier. If the supplier presents the client with an estimate of costs and the client recalls a delivery item unrepaired or unprocessed a charge will be payable for the estimate of costs, the stripping down of the delivery item, if applicable, handling charges, postage and, in addition, statutory VAT, when the delivery item is returned by the supplier. On return, in the absence of any particular arrangement, the supplier will demand that the client pay the sum in cash – to the carrier – (COD) on receipt of the goods. If the client decides not to have a delivery item repaired or to have it processed as offered, he has the option of allowing it to pass into the supplier's ownership. In the absence of any particular arrangement, the client would incur no expense. The item supplied passes into the supplier's ownership if the client does not wish the work about which he enquired to be carried out and if he expressly foregoes the return of the delivery item.

5. The period for asserting claims for defects for work and for material installed during repairs amounts to 6 months or claims for defects lapse after 1,000 operating hours as from the date of invoice.

6. The client has to allow the supplier the time and opportunity that, at his discretion, are deemed necessary to remedy faults. In particular, the client must ensure that the item about which he has made a complaint is made available to the supplier for examination and for the rectification of faults. Replaced parts pass into the supplier's ownership

7. If it should become apparent during the assertion of the rights arising from defects by the ordering party, that the defects which are the cause of the complaint should have been caused by another technical cause as was the case with the original repair, this is not deemed to be a ground for asserting a claim for defects.

8. Defects which result from damage, an incorrect connection, or wrong operation are excluded from all rights which the ordering party has to assert a claim on the ground of a defect. Faults arising from the following are excluded from any form of warranty whatsoever: damage, faulty connection or improper use by the client or third parties, damage caused by act of God, such as lightning strike, faults due to wear and tear, the overstraining of mechanical and electromechanical parts, usage not in accordance with regulations or faults arising from dirt, damage by unusual mechanical, chemical or atmospheric conditions.

9. The claims for defects lapse if modifications should be made to the performances of the supplier without his approval.

10. The client must inform the supplier immediately and in writing of any obvious fault in the work carried out by the supplier and, at the latest, within ten days of identifying the fault after receipt of the supplied item or after putting it into operation; failure to do this will release the supplier from his liability for faults.

11. The supplier is liable for loss and damage to the item supplied, in as far as fault attaches to him or to his vicarious agent. In the case of damage he is obliged to repair the delivery item without charge. If this is impossible or if it involves disproportionately high costs, reimbursement of the cost of reacquisition on the date on which the damage occurred must be made. Claims in excess of this, in particular claims for damages on the part of the client or third parties, are excluded, unless intent or gross negligence on the supplier's part is evident.

X. Place of jurisdiction, separability

1. The law of the Federal Republic of Germany has validity for the business relationships and the entire legal relationship between the parties. The validity of the UN Convention on Contracts for the International Sale of Goods is excluded.

2. Place of performance and jurisdictional venue is Gießen. The supplier is however entitled to take legal action at any other legally justified jurisdictional venue

3. If any one clause in these terms of business or a provision in the context of other agreement proves to be invalid, this does not affect the validity of all other provisions or agreements.