

GENERAL TERMS AND CONDITIONS FOR DELIVERIES, WORK AND SERVICE

- I. General**
- The following conditions apply to all consultations, offers, sales, deliveries and services and to all current and future contractual relationships between Tema GmbH, its affiliates (hereinafter "Seller") and the Buyer, who is entrepreneur according to § 14 BGB (German Civil Code), exclusively. Conditions for purchasing of the Buyer, which are completely or partly contrary to the conditions of the Seller or the legal regulations, are hereby expressly disagreed. The following conditions also apply if the Seller carries out the deliveries or services in awareness of conflicting purchase conditions of the Buyer without reservations. The following conditions apply to all future business relations, even if they are not explicitly referenced and as far as the Buyer has known them or ought to have known due to a previous business relationship. For the scope of the deliveries or services the bilateral consistent written declarations shall apply.
 - Verbal subsidiary agreements do not exist. Agreements, particularly between the representatives of the Seller, deviating from the conditions of the Seller in individual cases, are only binding with the written confirmation by the Seller.
- II. Offer and conclusion of the contract**
- Offers of the Seller are always without engagement, i.e. they merely constitute a request to the Buyer to give a legally binding offer. Contracts, even those at trade fairs or through agents of the Seller, only are entered in accordance with the written confirmation of order of the Seller and its receipt by the Buyer. Advertising documents and brochures of the Seller are not binding, and, in particular, are subject to modifications and errors. § 434 par. 1 sent. 3 shall remain unaffected.
 - The Seller reserve the title and copyright for figures, drawings and calculations as well as for other documents. This also applies to those written documents, which are referred to as confidential. Prior to its transfer to a third person, the Buyer has to obtain the written confirmation of the Seller and the documents have to be returned upon request to the Seller.
 - The configuration of the subject of the contract is exclusively described in the offers, confirmation of orders and the corresponding documents of the Seller, without being a guarantee according to § 443 BGB (German Civil Code), subject to par. 4.
 - As far as guarantees are given by the Seller, this needs to be done expressly and in written form, and they shall not constitute guarantees according to § 443 BGB, but independent guarantee promises.
- III. Deliveries and terms of delivery**
- The Seller can not be held responsible for delays if the Buyer does not or not in time fulfill its obligations to cooperate, particularly taking care of magisterial authorizations, implementation plans, documents for specification of the subject of the contract, clarification of all technical details, payment securities and down payments. If these obligations are not fulfilled in time, the delivery times will be extended accordingly plus an adequate starting time, unless the Seller is responsible for the delay. Offer and delivery are made subject to the approval of the Ministerial authorities of Economic and Export Affairs as well as other regulations for export control and/or regulatory agencies.
 - If, after conclusion of the contract, there are any indications that the ability of the Buyer is endangered, e.g. default of payment, suspension of payment, request for insolvency proceedings, chattel mortgage of current assets, unfavorable information of banking establishments, credit institutions or credit insurers, the Seller is entitled to suspend his services and to cancel the contract and/or to claim damages after an unsuccessful appointment of a date for providing security in the form of directly enforceable bank guarantee or advance payment. The appointment of a date is not applicable if the endangerment of the ability is obvious.
 - Binding delivery dates have to be agreed upon always in written form. In case of separable deliveries the Seller is entitled to partial delivery and to early deliveries subject to prior written information.
 - In the case of call orders, an adequate delivery date is deemed to be agreed, which is at least six weeks from the date of the call order. In case manufacturing or acceptance dates are not agreed, the Seller may ask for a binding fixing of it at the latest three (3) months after confirmation of order. If the Buyer does not comply with such request within two (2) weeks after posting a written notice concerning this matter, the Seller is entitled to set an additional respite of one week and after unsuccessful expiration of that period the Seller is entitled to claim damages and/or to cancel the part of the contract which has not been fulfilled. The same applies when, after expiry of the delivery date, the subject of the contract or parts thereof have not been accepted or have not been delivered due to a default of the Buyer.
 - Delays, arising out of acceptance delays of the performed work at the agreed date on Buyer's side have to be notified in writing to the Seller at least one week before the agreed date. In case the Buyer defaults acceptance or culpably breaches other duties of co-operation, the Seller shall be entitled to claim for damages caused thereby, including potential additional costs. Further claims or rights shall remain reserved.
 - As far as circumstances, not caused by the Seller, complicate, delay or make the fulfillment of accepted orders impossible (Force Majeure), the Seller is entitled to postpone the delivery, the partial delivery or the outstanding delivery for a period equal to the period of the obstruction or to cancel fully or partly the contract without a claim for damages by the Buyer. Force Majeure includes particularly e.g. magisterial intervention, refusal of necessary export approvals, war, revolt, terrorism, governmental acts, business disruption, strikes, lock out, epidemics, interruption of work due to political or economic affairs, shortage of essential raw or working materials, shortage in materials, difficulties with the energy supply, transport delay due to traffic congestion, power failure, acts of god or an inevitable event which affect the Seller, his subcontractors or foreign companies, of which the operations of the plant of the Seller is depending on. The antecedent is also valid if such events occur at a moment at which the Seller is in default. The Seller shall have the same rights if goods required for the order are not available, as the Seller has not been delivered by their subcontractors, although the Seller has concluded a matching cover transaction and the Seller is not otherwise guilty on this. The Seller shall be obligated to inform the Buyer when one of the above-mentioned circumstances occurs, and, in case of withdrawal, to reimburse without delay any considerations already made by the Buyer.
 - The Buyer can only set an additional respite for delivery, if the agreed delivery date has been exceeded by more than two (2) weeks. This additional respite has to be adequate and last at least three (3) weeks. After unsuccessful expiry of the additional respite the Buyer is entitled to cancel the contract. § 323 par. 2 BGB shall remain unaffected. Any claim for damages against the Seller due to breach of duty shall be excluded within the scope of fig. VIII.
- IV. Prices and payment terms**
- Unless otherwise agreed the prices for delivery are ex works (INCOTERMS 2010), exclusive packaging, shipping costs and all taxes, duties or levies payable under the applicable law. The Buyer is obligated to pay or reimburse the taxes, duties or levies that are imposed on the Seller or his subcontractors.
 - If, after conclusion of the contract, any changes of the calculation base arise from higher labor and material costs, increase of statutory VAT or other circumstances, particularly technical based change in calculation, the Seller is entitled to increase the contract price in an adequate percentage to the occurred change of the calculation base.
 - Unless otherwise agreed, invoices shall be paid due net in the agreed currency within 14 days from date of invoice. The legal regulations regarding the consequences of default in payment shall be applicable. In case of default in payment by the Buyer, the Seller shall be entitled to stop contractual services until the Buyer has settled the liabilities payable.
 - Partial deliveries are charged at once and each of them are payable separately, irrespective of the completion of the total delivery.
 - The Buyer only is entitled to charge up against the Seller, if the counterclaims are legally stated, undisputed or acknowledged by the Seller. Furthermore the Buyer is entitled to exercise a lien insofar as the counterclaim is based upon the same contractual relationship.
- V. Retention of title**
- The goods remain property of the Seller until all claims against the Buyer out of the business relationship have been fulfilled. With the conclusion of the contract the Buyer authorizes the Seller, on Buyer's expense, to enter or announce the retention of title in the required form and in accordance with applicable national rules in public registers, books or similar documents. The Buyer is obliged to give the Seller any assistance to enable him to take all necessary measures to protect its property. If the Buyer acts contrary to contract, particularly in case of payment delay, the Seller is entitled to take back the goods. The Buyer is obliged to surrender. By taking back the goods the Seller does not cancel the contract, unless the Seller would have made expressly a written declaration thereof. The distress of the goods by the Seller always means a cancellation of the contract. After taking back the goods the Seller is entitled for resale. The revenue is to be deducted from the liabilities – less adequate handling charges – of the Buyer.
 - The Buyer is obligated to take care of the goods; particularly, he is obligated to insure them sufficiently amounting to the replacement value at his own expense against water damages, fire losses
- and damages due to theft. Provided that maintenance and inspection operations are necessary, the Buyer has to carry them out in time and at its own expense. A fundamental relocation of the goods requires the prior written consent of the Seller.
- The Buyer is entitled to resell the goods in a regular course of business; the Buyer transfers to the Seller all claims amounting to the grand total of the invoice (including VAT), which arise from the resale against third parties, irrespective of whether the goods have been resold without or with modifications. The authorization for collection of receivables also exist after assignment. The Seller's authority to collect the claim by himself will remain unaffected thereof. But the Seller commits not to collect the claims if the Buyer fulfils its payment obligations with the collected sales revenues, the Buyer does not fall behind with payment and particularly, there is no request for insolvency, composition or bankruptcy proceedings or suspension of payment. In these cases, the Seller is entitled to request that the Buyer discloses the conveyed claims and whose debtors, gives all necessary information for collection, hands out all corresponding documents and notifies the assignment to the debtors (third parties).
 - The processing or transformation of the goods always is carried out on behalf of the Seller. If the goods are processed with items, which are not owned by the Seller, he will acquire a co ownership share concerning the new item proportional to the value of the goods (invoiced final amount, including VAT) to the other processed item at the date of processing. The afore said also applies for items resulting due to processing of the goods.
- VI. Passing of the risk**
- The shipment of the goods is carried out by the Seller ex works (INCOTERMS 2010) at the risk of the Buyer. The same applies if the freight and other costs are at the expense of the Seller. The goods are insured by the Seller against transport damages only at the expressly written instruction and on account of the Buyer.
 - If pickup is agreed at the responsibility of the Buyer and not carried out within eight (8) days after the agreed date, the shipment will be carried out by the Seller for account of the Buyer using a type of shipment which seems to be economical to the Seller.
 - The risk passes with the handover of the customarily packaged goods to the Buyer, the first freight carrier or the forwarding agent. This also applies for separate partial deliveries and if the Seller has borne the forwarding charges.
 - If the shipment is delayed by request of the Buyer or in case of default of acceptance, the risk will pass with notice of readiness for shipment. In this case the storage of the goods is on behalf and at the expense of the Buyer.
 - Transport packaging, selling packaging, re-packaging and any other packaging according to the regulations about packaging will not be taken back, excepting pallets. The Buyer shall be obligated to arrange the disposal of the packaging at its own expense.
- VII. Liability for defects**
- The Buyer has to inspect immediately the goods according to § 377 of the German Commercial Code (HGB) and to give immediately written notice to the Seller of any visible defects, particularly obvious ones. This obligation to give notice also applies if defects become visible at a later time. Giving notice shall be regarded as immediately if it is performed within two weeks, with the timely sending of the notice being sufficient for fulfilling the time limit. If the Buyer fails to notify the Seller in due time in writing, the goods shall be considered accepted in relation to these defects. Any liability due to fraudulent conduct shall remain unaffected.
 - If the goods have defects, the Buyer will be entitled to choose supplementary performance in the form of a removal of defects or delivery of an object free of defects. Replaced, defective parts shall be returned to the Seller and become the property of the Seller. The Seller is entitled to refuse the manner of the chosen supplementary performance, if it only is possible with disproportional costs. Place of performance is the delivering factory in each case. For removal of defects it is to give reasonable time and opportunity to the Seller. The Buyer has to grant to the Seller access to the defective goods, including the disassembly and assembly, without cost to the Seller.
 - If the supplementary performance fails despite a repeated attempt, the Buyer will be entitled at its choice to require cancellation or reduction of the purchase price. The cancellation is excluded if the breach of duty by the Seller is insignificant.
 - The limitation period for claims due to defects is twelve (12) months, beginning from the delivery of the goods.
 - Operational life times for wear parts, such as cutting punches, stencils, milling cutters, bearings, consumables, metering devices and needles, contact equipment, etc. are binding only when they have been assured in writing. The Seller shall not be liable for defects caused by parts not supplied and delivered by him, modifications made without the written consent of the Seller, excessive strain, improper tools and material, faulty or negligent treatment, repairs carried out by the Buyer or third party in an inappropriate manner or for normal wear (especially wear & tear).
- VIII. Liability for damages**
- For damages to life, body and health, and in case of willful intent or gross negligence, the Seller shall be liable in accordance with statutory provisions.
 - For damages based on breach of fundamental contractual obligations due to slight negligence, the Seller shall be liable according to statutory provisions, but limited to the amount of the contractually typical damage foreseeable when the contract was concluded. Fundamental contractual duties are the fundamental obligations resulting from the contract, whose fulfillment allows the contract to be properly executed, whose infringement endangers the fulfillment of the purpose of the contract, and on the compliance of which the Buyer regularly relies and may rely. Claims for damages resulting from a breach of non-essential contractual duties in case of slight negligence shall be excluded.
 - The Seller shall not be liable for indirect damages (consequential damages) such as loss of production, loss of profit, recall costs, etc.
 - An extended liability for compensation as provided in this fig. VIII is excluded, regardless of the character of the asserted claim. This is also valid to personal liability for damages of appointees, employees, assistants, agents and servants of the Seller.
 - As far as the UN Convention on Contracts for the International Sale of Goods (CISG) is applicable, the Seller shall be liable for damages only when being guilty in this respect.
- IX. Intellectual property rights**
- The intellectual property rights concerning drafts, drawings, software, products, articles, equipments and any other new designed or developed items created by the Seller or by third parties instructed by the Seller, belong to the Seller, even if the Buyer has borne the expenses for this purpose.
 - The Buyer may use the provided drawings and plans from the Seller only for the intended purpose. The Buyer is not entitled to use the drawings and plans for any other purpose, particularly not for the reproduction of the supplies or parts of the supplies.
 - The Seller is not aware of any intellectual property rights of any third parties, which would restrict the use of the purchased good. The Seller is not liable, if the delivered goods infringe any intellectual property rights in the country of destination.
- X. Additional clauses**
- German law shall be applicable.
 - The assignment of claims against the Seller to which the Buyer is entitled due to the business relation, shall be excluded.
 - Unless otherwise stipulated in the order confirmation of the Seller, place of performance is the business location of the Seller.
 - Jurisdiction is for any of the contractual disputes, which arise directly or indirectly, the location of the Seller. The Seller reserves the right to submit any disputes to the general place of jurisdiction of the Buyer.
 - If one of the preceding conditions is ineffective, the effectiveness of the regulations about acceptance and these terms and conditions for the rest will remain unaffected thereof. Any clauses, becoming ineffective, will be replaced by new clauses, which achieve the equal economic success. As far as clauses have not become an integral part of this terms and conditions, the subject matter of contract insofar acts in accordance with the legal regulations.