

General Term for Delivery of Machinery and Plants

I. General

1. All supplies and services are subject to these Terms and Conditions as well as special contractual agreements. Any terms and conditions deviating herefrom shall not become part of the contract even through acceptance and execution of the order.
2. All descriptive and technical specifications in our price lists, catalogues, quotations and specifications pertaining to a quotation such as photographs, drawings, descriptions, weights and dimensions, capacity and consumption data and all information relating to application of equipment are intended only to present a general guide unless expressly confirmed by us as binding in writing. Slight variations of such descriptive product specifications do not affect the fulfillment of the contract, provided that this variation is reasonable to the contract party. This refers especially for the case of modifications, amendments and improvements serving the technical progress.
3. The supplier reserves ownership right and copyright in quotations, samples, drawings and similar information including electronic format, such information shall not be disclosed to third parties. The supplier is obliged to only make plans designated as confidential by customer accessible to third parties with customers consent.
4. Our tenders are subject to alterations without notice. Contracts are only concluded by us when we give our written acknowledgment of the order or perform goods delivery. Verbal or telephonic agreements must be confirmed in writing. Telefax and E-Mail messages are considered as writing. Our staff in particular is not authorized to make any collateral agreements or allowances exceeding the contents of the written contract or which may change these general terms and conditions to our disadvantage.

II. Price and Payment

1. In absence of special agreement, prices are deemed to be ex-works excluding packing and loading. VAT at the respective statutory rate is added to the price. If a period longer than six months elapses between the order confirmation and the agreed commencement of production, or if production takes longer than six months, in the event that there is an increase in commodity prices, wages, freight rates or on price of parts to be purchased in addition by the supplier, the supplier has the right to reasonably increase the price agreed, but no more than 5 percent.
2. Unless otherwise agreed the payment is to be made cash without any deduction to our accounts as follows:
1/3 down payment upon receipt of the order acknowledgment
1/3 as soon as the buyer has been notified that the main components are ready for dispatch,
the remaining amount within one months after passing of risk
Deduction of discount or any other deductions are not permissible.
3. Bills of exchange, cheques and remittances are not considered as fulfilment until they have been fully credited to our account. In the event of dishonouring or re-debiting of a cheque we are furthermore entitled to claim from the purchaser a flat rate of € 30,00 plus VAT as expense allowances, unless the purchaser gives proof that no or only insignificant expenditure is incurred
4. Default interests in an amount of eight percent above the base rate of interest pursuant to Section 247 German Civil Code (BGB) shall be charged in the event of the payment being exceeded, with the assertion of any further rights being reserved, without the requirement to put the customer in default. If, in case of agreed payment by instalments, a payment is not made in due time in whole or in part, the entire amount still outstanding shall become due for immediate payment. Irrespective of the agreed payment method, the supplier is entitled, at its option, to demand immediate payment of the entire purchase price, or to withhold the delivery until the full purchase price has been paid, or to withdraw from the contract, it should transpire that the claim to the purchase price is at risk to the customer's circumstances, irrespective whether such risk arose before or after conclusion of the contract. One case of such risk is in particular, is a bill of exchange accepted by the customer is protested.
5. The customer is not entitled to withhold payments on account of counterclaims or to make set-off against them, unless such counterclaims are undisputed or recognized by final and binding judgment.

III. Delivery Period, Delay in Delivery

1. The delivery period ensues from the agreements made by the contracting parties. The precondition for compliance therewith by the supplier is that all commercial and technical questions between the contracting parties have been clarified and the customer has met all obligations incumbent on it, such as production of the required official certificates and permits or the payment of the deposit. In this not the case, the delivery period shall reasonably extended. This shall not apply if the supplier is responsible for the delay.
2. Compliance with the delivery period is subject to the reservation of correct and punctual delivery of supplies to the supplier. Any arising deviation from the agreed delivery time are informed by the suppliers as soon possible.
3. The delivery period is complied with if the delivery item has left the supplier's works by the expiration of the delivery period or if readiness for dispatch has been notified. Insofar as acceptance is required, the date of acceptance is authoritative – such in the case of justified refusal to accept – alternatively the date of notification that the goods are ready for acceptance.
4. If the dispatch or the acceptance of the delivery item is delayed for reasons for which the customer is responsible, any costs incurred as a result of the delay, starting one month after notification that the delivery is ready for dispatch or acceptance, shall be charged to the customer.
5. If non-compliance with the delivery period is due to force majeure, industrial action or other event outside the supplier's sphere of influence, the delivery period shall be reasonably extended. The supplier shall notify the customer of the start and end of any such circumstances as soon as possible.
6. The customer may withdraw from the contract without specifying a period of time if it becomes impossible for the supplier to effect the entire performance prior to the passing of the risk. In addition the customer may withdraw from the contract if, in case of an order, the execution of one part of the delivery becomes impossible and the customer has interest in rejecting partial delivery. If this is not the case, the customer has to pay the contract price attributable to the partial delivery. The same shall apply in the event of the supplier's inability. In other respects section VII, 2 shall apply.

If the impossibility or inability occurs during default of acceptance or if the customer is solely or predominantly responsible for these circumstances, the customer remains obliged to effect consideration.

7. If the supplier is in default and if the customer incurs a loss as a result, the customer shall be entitled to request a flat-rate compensation for default. It shall amount to 0,5% for each full week of delay, but in total no more than 5% of the value of the part of the complete delivery which cannot be used in due time or according to the contract as a consequence of the delay.

If the customer grants the supplier in default a reasonable time for period of performance – taking into account statutory exceptional cases – and if the time period is not met, the customer is entitled to rescind the contract within the scope of statutory provisions.

Any further claims arising from the default of delivery are governed exclusively by section VII. 2 of these Terms and Conditions.

IV. Passing of the Risk and Acceptance

1. The risk is passed to the customer when the delivery item has left the works. This applies even in the case of partial deliveries or if the supplier has also assumed other services, e.g. forwarding charges or delivery and installation. If acceptance is required, this is authoritative for the passing of the risk. It must be carried out without delay on the acceptance date, alternatively after the supplier has notified that the delivery is ready for acceptance. The customer must not refuse acceptance if an immaterial defect exists.
2. If the dispatch or the acceptance is delayed or not effected as a result of circumstances which are not attributable to the supplier, the risk shall pass to the customer from the date of notification that the delivery is ready for dispatch or acceptance. The supplier undertakes to take the insurance requested by the customer at the expense of the customer.
3. Partial deliveries are admissible insofar as they are reasonably acceptable for the customer.

V. Reservation of Title

1. The supplier reserves title to the delivery item until all payments from the supply contract have been received.
2. The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other risks at the customer's expense, unless the customer has provably taken out the insurance itself.
3. The customer may neither pledge the delivery item nor assign it by the way of security. The customer must notify the supplier without delay of any attachment or seizure or other acts of disposal by third parties.
4. If the customer acts in breach of contract, in particular in case of default of payment, the supplier is entitled to take back the delivery item after sending a reminder and the customer is obliged to return the item. The assertion of the reservation of title and the attachment of the delivery item by the supplier shall not be deemed to constitute rescission of the contract.

5. Due to the reservation of title the supplier may only ask for return of the delivery item, in case the supplier has a withdrawn from the contract.
6. If a petition for insolvency proceedings is filed, the supplier shall be entitled to withdraw from the contract and to demand the immediate return of items delivered.

VI. Liability for Defects

The supplier provides a warranty against defects as to quality and defects of title in the delivery to the exclusion of further claims – subject to section VII – as follows:

Defects as to Quality

1. All those part which provide to be defective as a result of a circumstance prior to the passing of the risk must be rectified or replaced free of charge at the supplier's option. The supplier must be notified without delay in writing when such defects are identified. Any replaced parts become the property of the supplier.
2. Following agreement with the supplier, the customer must allow the supplier the requisite time and opportunity to effect any rectifications and replacements the supplier considers necessary; otherwise the supplier shall be exempted from liability for the consequences resulting therefrom. The customer only has the right to remedy the defect itself or to have it remedied by third parties and to demand reimbursement of the requisite expenses from the supplier in urgent cases where operating safety is in jeopardy or to avert disproportionately large losses, whereby the supplier must be notified immediately.
3. Of the direct costs due to rectification or replacement, the supplier shall bear – provided that the complaint proves to be justified – the costs of the replacement part including shipping and reasonable costs of dismantling and installation. In addition, if this can be reasonably requested to the situation of the individual case, the cost providing any fitters and auxiliary staff required.
4. The customer has the right to rescind the contract within the scope of statutory provisions if the supplier – taking into account the statutory exceptional cases – allows a reasonable deadline given to the supplier for rectification on account of a defect as to quality, to elapse in vain. If the defect is only immaterial, the customer only has the right to reduce the contract price. Otherwise the right to reduce the contract remains excluded.
5. Further claims are exclusively governed by Section VII. 2 of these Terms and Conditions.
6. No warranty is given in the following cases in particular:
Unsuitable or improper use, defective assembly or putting into operation by the customer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable means of operation, defective construction work, unsuitable building foundation, chemical, electrochemical or electric influences, provided that the supplier is not responsible for them.
7. If the customer or a third party rectifies any defect improperly, the supplier has no liability for the consequences resulting therefrom. The same applies to any modification made to the delivery item without prior consent by the supplier.
8. In the event that non-original spare parts are used and a defect arises as a consequence thereof, the customer has the burden of proof to show that the non-original spare part used did not cause or jointly cause the defect. If the customer cannot furnish such proof, the supplier has the right to refuse all claims resulting therefrom.

Defects of Title

9. If the use of the delivery item leads to an infringement of industrial property or copyrights within Germany, the supplier shall, in principle, procure at its expense the right for the continued use by the customer or modify the delivery item in a way that is reasonable acceptable for the customer so that the infringement of the property no longer exists. If this is not possible under economically reasonable conditions or within reasonable period, the customer shall be entitled to rescind the contract. Subject to aforementioned preconditions, the supplier also has the right to rescind the contract. In addition, the supplier shall indemnify the customer against undisputed claims and claims by the proprietors of the property right concerned recognized by final and binding judgment.
10. The supplier's obligation set forth in section VI. 9 are final for the case of infringement of property right and copyright, subject to section VII. 2. They shall only exist if
 - the customer notifies the supplier without delay of claimed infringement of property rights or copyright,
 - the customer support the supplier to a reasonable extent in defending against claims asserted or enables the supplier to carry out the modification in accordance with section VI.7,
 - the supplier remains entitled to take all defence measure including extra-judicial settlement,
 - the defect of title is not based upon an instruction by the customer and
 - the infringement of rights was not caused by the customer modifying the delivery item arbitrarily or using it in a manner not in accordance with the contract.

VII. Liability, Liability Exclusion

1. If the customer cannot use the delivery item in accordance with the contract through the supplier's fault because suggestions or advice given before or after conclusion of the contract were executed incorrectly or because of the failure to execute such suggestions or advice, or through the violation of other collateral contractual obligations – in particular operating and maintenance instructions for the delivery item – the provisions of section VI and VII. 2 shall apply accordingly, to the exclusion of any further claims by the customer.
2. The supplier is only liable for damage not caused to the delivery item itself – for whatever legal grounds -
 - a.) in the case of intent,
 - b.) in the case of gross negligence by the owner, / the executive bodies or officers,
 - c.) in the case of culpable injury to life, body or health,
 - d.) in the case of defects which were concealed fraudulently or the absence of which was guaranteed,
 - e.) in the case of defects to the delivery item insofar as the Product Liability Act provide for liability for personal injury or for property damage to object for personal use.

In case of culpable violation of material contractual obligations, the supplier shall be liable for gross negligence by non-managerial employees and for slight negligence. In the latter case this is limited to foreseeable damage typical for contracts. Any further claims are excluded.

VIII. Limitation

All claims by the customer – for whatever legal grounds – become statute-barred after 12 months. The statutory periods apply to claims for damages pursuant to section VII. 2 a – e. They also apply to defects to a building and to delivery items which are used for a building to their customary use and which caused its defectiveness.

IX. Use of Software

If any software is included in the scope of delivery, the customer is granted a non-exclusive right to use the software supplied including its documentation. It is provided for use on the delivery item it is intended for. Using the software on more than one system is prohibited.

The customer may only duplicate, revise, translate, or convert the software from the object code into a source code to the extent permitted by law (section 69 a et seq. German Copyright Act (UrHG)). The customer undertakes not to remove manufacturer details – in particular copyright marks – or to modify them without the prior express consent of the supplier.

All other rights to the software and the documentation including copies remain with the supplier or with the software supplier. Granting sublicenses is not admissible.

X. Place of Performance, Place of Jurisdiction and Applicable Law

Place of jurisdiction is the head office of Gericke GmbH at the date of conclusion of the contract. For contracts with fully qualified merchants, legal entities of public law or special assets under public law the head office of Gericke GmbH as place of jurisdiction is agreed at the date of conclusion of the contract. However, we are also entitled, to institute proceedings at the head office of the buyer or at the domicile of one of his subsidiaries.

The law of the Federal Republic of Germany will be applied.

The application of the uniform United Nations and the Uncitral Conventions for the sale of goods are hereby fully excluded.

XI. Miscellaneous

The inoperativeness of individual clauses does not involve the inoperativeness of the entire General Terms.

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Gericke GmbH