

LET'S TALK

ABOUT

TRANSFORMERS



General Terms and Conditions

Of Delivery for Products and Services of the Electrical Industry for use in Business Transactions with Business Customers

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I. General Provisions

1. The scope of deliveries or services (hereinafter referred to as „Deliveries“) shall be governed by the written declarations of both parties. However, the Purchaser's General Terms and Conditions of Business shall only apply to the extent that the Supplier or service provider (hereinafter referred to as „Supplier“) has expressly agreed to them in writing.
2. The Supplier reserves the unrestricted right of exploitation of its property rights and copyrights to 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 shall, if the contract is not awarded to the Supplier, be returned to the Supplier immediately 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 rightfully transferred Supplies.
3. The Purchaser shall have the non-exclusive right to use standard software with the agreed performance characteristics in unmodified form on the agreed equipment. The Purchaser may make one back-up copy without express agreement.
4. Partial deliveries are permitted, provided they are reasonable for the Purchaser.

II. Prices and Terms of Payment

1. Prices refer to a copper price of EUR 153.40 / 100 kg. The copper price is calculated as follows: DEL-Note + 6% ./. EUR 153.40 = EUR copper surcharge / 100 kg. The prices are ex works excluding packaging plus the applicable statutory value added tax.
2. If the Supplier is responsible for assembly or erection and unless otherwise agreed, the Purchaser shall bear, in addition to the agreed remuneration, all necessary ancillary costs such as travel expenses, costs for the transport of tools and personal luggage as well as allowances.
3. Payments shall be made free Supplier's paying agent.
4. The Purchaser may only set off against claims that are undisputed or have been finally adjudicated.

III. Retention of title

1. The items of the deliveries (reserved goods) remain the property of the supplier until all claims against the customer to which he is entitled from the business relationship have been fulfilled. If the value of all security interests to which the Supplier is entitled exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interests at the Purchaser's request.
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 possible only for 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 dependent upon the customer fulfilling its payment obligations.
3. In the event of seizure, confiscation or other dispositions or interventions by third parties, the Purchaser must inform the supplier immediately.
4. In the event of breaches of duty by the Purchaser, in particular default of payment, the supplier is entitled to withdraw from the contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the Purchaser; the legal provisions on the dispensability of setting a deadline remain unaffected. The Purchaser is obliged to surrender the goods.



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IV. Times set for Supplies; Delay

1. Compliance with time limits for Supplies is subject to the timely submission by the Purchaser of any documents, necessary permits and releases, in particular concerning plans, as well as to the Purchaser's compliance with the agreed terms of payment and other obligations. If these conditions are not fulfilled in time, the time limits shall be extended accordingly; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the time limits is due to force majeure, e.g. mobilization, war, riot, or similar events, e.g. strike or lockout, the time limits shall be extended accordingly.
3. If the Supplier is responsible for the delay and the Purchaser can prove, that he has suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the delay could not be put to the intended use.
4. Both claims for damages on the part of the Purchaser due to delayed delivery and claims for damages in lieu of performance which exceed the limits specified in subsection 3 are excluded in all cases of delayed delivery, even after expiry of a deadline set to the supplier for delivery. This shall not apply in cases of mandatory liability based on intent, gross negligence or injury to life, body or health. The Purchaser may only withdraw from the contract within the framework of the statutory provisions insofar as the Supplier is responsible for the delay in delivery. A change in the burden of proof to the detriment of the purchaser is not connected with the above provisions.
5. The purchaser is obliged to declare within a reasonable period of time at the request of the supplier whether he is withdrawing from the contract due to the delay in delivery or insisting on the delivery.
6. If dispatch or delivery is delayed at the request of the purchaser by more than one month after notification of readiness for dispatch, the purchaser may be charged storage fees in the amount of 0.5% of the price of the items of the delivery for each month or part thereof, but no more than a total of 5%. The parties to the contract are at liberty to prove higher or lower storage costs.

V. Passing of risk

1. The risk shall pass to the Purchaser, even in the case of carriage paid delivery, as follows:
 - a) for deliveries without installation or assembly, when they have been brought to the dispatch or collected. At the request and expense of the Purchaser, the Supplier shall insure the Supplies against the usual risks of transport.
 - b) if the Supplies include assembly or erection, at the day of taking over in the own works or, if so agreed, after a fault-free trial run.
2. If dispatch, delivery, the start or performance of assembly or erection, 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 has otherwise failed to accept the Supplies, the risk shall pass to the Purchaser.

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VI. Installation and assembly

The following provisions apply to installation and assembly, unless otherwise agreed in writing:

1. The Purchaser shall assume and provide in good time at his own expense: a) all earthwork, construction work and other ancillary work outside the industry, including the necessary skilled and unskilled workers, building materials and tools, b) the commodities and materials required for assembly and commissioning, such as scaffolding, lifting gear and other devices, fuels and lubricants, c) energy and water at the point of use, including the connections for heating and lighting, d) at the assembly site for the storage of machine parts, apparatus, materials, tools etc. d) at the assembly site for the storage of machine parts, apparatus, materials, tools, etc., e) protective clothing and protective devices required due to special circumstances at the assembly site.
2. Prior to commencement of the assembly work, the Purchaser shall provide the necessary information about the concealed power, gas and water lines or similar installations as well as the necessary structural data without being asked.
3. Before the start of assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption.
4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional travelling of the Supplier or the erection personnel as may be necessary.
5. The Purchaser shall attest to the hours worked by the erection personnel at weekly intervals and shall immediately confirm to the Supplier the duration of such hours and the completion of assembly, erection or commissioning.
6. If, upon completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within two weeks. If this is not done, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place when the Supplies have been put to use, if necessary after completion of an agreed test phase.

VII. Acceptance

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

VIII. Material defects

The supplier shall be liable for material defects as follows:

1. All those parts or services which, at the supplier's discretion, are found to have a material defect within the limitation period shall be repaired, replaced or provided again free of charge, irrespective of the operating time, provided that the cause of the defect already existed at the time of the transfer of risk.
2. This shall not apply where longer periods are prescribed by law according to Sections 438 para. 1 No. 2 (buildings and things used for buildings), 445b (right of recourse) and 634a para. 1 No. 2 (defects of a building) of the German Civil Code (BGB), as well as in cases of injury to life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect. The statutory provisions on suspension of the statute of limitations, suspension and recommencement of the periods shall remain unaffected.
3. The Purchaser shall notify the Supplier without undue delay in writing of any defects of quality.

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4. In the event of a notification of defects, the Purchaser may withhold payments to an extent which is in reasonable proportion to the defects of quality that have occurred. The purchaser may only withhold payments if a notification of defects is made, the justification of which is beyond doubt. If the notification of defects is unjustified, the supplier is entitled to demand compensation from the purchaser for the expenses incurred by him.
5. First of all, the supplier must be given the opportunity for subsequent performance within a reasonable period.
6. If the subsequent performance fails at least twice, the Purchaser may - without prejudice to any claims for damages according to Art. XI - withdraw from the contract or reduce the remuneration.
7. Claims for defects shall not exist in the case of insignificant deviations from the agreed quality, insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable foundation soil or from particular external influences not assumed under the contract or from non-reproducible software errors. If the Purchaser or third parties carry out improper modifications or repair work, no claims based on defects shall exist for these and the consequences thereof.
8. Claims of the Purchaser for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the object of the delivery has subsequently been moved to a location other than the Purchaser's branch office, unless the move corresponds to its intended use.
9. The Purchaser's right of recourse against the Supplier pursuant to Sec. 445a BGB ("re-course of the Seller") is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. The scope of the Purchaser's right of recourse against the Supplier pursuant to Sec. 445a para. 2 BGB shall be determined by No. 8 accordingly.
10. For claims for damages Art. XI (Other claims for damages) shall apply. Any further-reaching or other claims than those set out in this Art. VIII against the Supplier and its agents on account of a defect are excluded.

IX. Industrial property rights and copyrights; defects of title

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights") only in the country of the place of delivery. 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 time period stipulated in Art. VIII No. 2 as follows:
 - a) The Supplier shall choose whether to acquire, at its own expense, the right to use the Property Rights with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the Property Rights 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 of the purchase price.
 - b) The Supplier's obligation to pay damages is governed by Art. XI.
 - c) The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other good cause, he shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.



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2. Claims of the Purchaser shall be excluded if he is responsible for the infringement of Property Rights.
3. Claims of the Purchaser shall also be excluded if the infringement of the Property Rights is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
4. In the event of infringements of industrial property rights, the claims of the Purchaser regulated in No. 1 a) shall be subject to the provisions of Art. VIII No. 4, 5 and 9 that shall apply mutatis mutandis.
5. In the event of other defects of title, the provisions of Art. VIII shall apply accordingly.
6. Further-reaching or different provisions than those in this Art. IX against the Supplier and his vicarious agents due to a defect of title are excluded.

X. Impossibility of Performance; Adjustment of Contract

1. If the delivery is impossible, the Purchaser is entitled to claim damages, unless the supplier is not responsible for the impossibility. However, the Purchaser's claim for damages shall be limited to 10% of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in cases of wilful misconduct, gross negligence or injury to life, body or health; this shall not entail a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract remains unaffected.
2. If unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted accordingly in good faith. If this is not economically justifiable, the Supplier shall be entitled to withdraw from the contract. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

XI. Other Claims for Damages

1. Claims for damages and reimbursement of expenses (hereinafter referred to as "Damage Claims") on the part of the Purchaser, irrespective of their legal basis, in particular for breach of duties arising in connection with the contract or tort, are excluded.
2. This does not apply if liability is mandatory, e.g. according to the product liability law, in cases of intent, gross negligence, injury to life, body or health, or due to the violation of essential contractual obligations. The claim for damages for the violation of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless there is intent or gross negligence or liability for injury to life, body or health. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.
3. Insofar as the Purchaser is entitled to claim damages under this Art. XI, such claims shall be time-barred upon expiration of the limitation period applicable to claims based on material defects pursuant to Art. VIII No. 2. in the case of claims for damages under the Product Liability Act, the statutory limitation provisions shall apply.

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XII. 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. The supplier is, however, also entitled to take legal action at the domicile of the Purchaser.
2. German substantive law applies to the legal relations in connection with this contract to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. Binding force of the contract

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



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Supplementary clause: Extended reservation of title

to „General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry“

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In amendment to Article III. (Retention of Title) of the General Terms and Conditions for the Supply of Products and Services of the Electrical Industry, the following simple and extended retention of title is agreed:

1. The items of the Supplies (Retained Goods) shall remain the property of the Supplier until settlement of all claims to which the Supplier is entitled against the Purchaser under the business relationship. 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 release a corresponding part of the security interests at the request of the Purchaser.
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 possible only for 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 dependent upon its having fulfilled its payment obligations in full.
3. a) If the Purchaser resells goods subject to retention of title, he hereby assigns to the supplier his future claims from the resale against his customers with all ancillary rights - including any balance claims - by way of security, without the need for any further special declarations. If the reserved goods are resold together with other items without an individual price having been agreed for the reserved goods, the Purchaser shall assign to the supplier, with priority over the other claims, that part of the total price claim which corresponds to the price of the reserved goods invoiced by the supplier.
b) If a justified interest is substantiated, the Purchaser shall provide the supplier with the information required to assert its rights against the customer and hand over the necessary documents. 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 if comparable justified indications exist which suggest that the Purchaser is insolvent, the supplier is entitled to revoke the Purchaser's authority to collect.
In addition, the Supplier may, after prior warning of the disclosure of the assignment by way of security or the realisation of the assigned claims, disclose the assignment by way of security, utilise the assigned claims and demand the disclosure of the assignment by the Purchaser to the customer.
4. a) The Purchaser is permitted to process, transform or combine the reserved goods with other objects. The processing, remodelling or combination is carried out for the supplier. The Purchaser shall keep the new object for the Supplier with the care of a prudent businessman. The processed, reshaped or combined item shall be deemed to be reserved goods.
b) In the event of processing, reshaping or combining with other items not belonging to the Supplier, the Supplier shall be entitled to co-ownership of the new item in the amount of the share resulting from the ratio of the value of the processed, reshaped or combined reserved goods to the value of the other processed goods at the time of processing, reshaping or combining. If the Purchaser acquires sole ownership of the new item, the Supplier and the Purchaser agree that the Purchaser shall grant the Supplier co-ownership of the new item created by processing, remodelling or combination in the ratio of the value of the processed, remodelled or combined reserved goods to the value of the other processed, remodelled or combined goods at the time of processing, remodelling or combination.
c) In the event that the new item is sold, the Purchaser hereby assigns to the Supplier by way of security his claim against the customer arising from the resale, including all ancillary rights, without the need for any further special declarations. However, the assignment shall only apply to the amount corresponding to the value of the processed, transformed or combined reserved goods invoiced by the Supplier. The portion of the claim assigned to the supplier is to be satisfied with priority. With regard to the collection authorization and the conditions for its revocation, No. 3. c) shall apply accordingly.
d) If the reserved goods are combined by the Purchaser with real estate or movable property, the Purchaser shall, without the need for further special declarations, also assign to the Supplier by way of security his claim to which he is entitled as remuneration for the combination, together with all ancillary rights, in the amount of the ratio of the value of the combined reserved goods to the other combined goods at the time of combination.
5. In the event of seizure, confiscation or other dispositions or interventions by third parties, the Purchaser must inform the supplier immediately.
6. In the event of culpable violation of essential contractual obligations by the customer, in particular default of payment, the supplier is entitled to take back the goods after a reminder. The purchaser is obliged to surrender the goods. The taking back or the assertion of the retention of title or the attachment of the delivery item by the supplier does not constitute a withdrawal from the contract, unless the supplier has expressly declared this. After prior warning, the supplier is entitled to use the repossessed goods subject to retention of title and to satisfy itself from the proceeds of the repossession by offsetting the outstanding claims.