

Effective July 2008

Conditions for the supply of heat exchangers and machinery

These shall apply to:

1. an entity that in concluding a contract is dealing within the scope of its trading or self-employed activity (a company);
2. legal entities under public law or a special fund under public law.

I. General

1. All deliveries and services shall be subject to specific contractual arrangements and to these conditions.

Possible variations in the purchasing conditions of the purchaser shall not be contractually valid in the case of order acceptance.

2. In the absence of any specific agreement, a contract shall be deemed to have been concluded upon the provision of written order acceptance by the supplier.

3. The supplier reserves title and intellectual property rights to samples, cost estimates, drawings and similar information of a tangible and intangible nature, including such information in electronic form. This information may not be made accessible to third parties.

The supplier undertakes to refrain from making available to third parties any information or documents that are defined as being confidential by the purchaser without the permission of the latter.

4. If a licence to export goods to a non-European Union country or a licence to import goods into a European Union member state is required, the offer, order confirmation and contract conclusion may only take place if a proper licence has been granted by the relevant authority.

5. The Supplier undertakes to apply for an export or import licence to the relevant authority.

6. If the export or import licence is not granted – whatever the legal grounds may be – the contract will not be formed. The Supplier will not be bound by any further obligations and in particular, will not be liable to pay any compensation.

7. The foregoing paragraphs 4 to 6 also apply to commercial transactions and brokerage transactions for which a licence must be obtained as well as technical support services subject to authorization such as repair services, maintenance, commissioning or similar services.

8. The goods manufactured and sold by the Supplier are only intended for customers in the countries and for persons, organizations, associations etc. that comply with all currently applicable export control regulations – in particular, this also refers to the intended use of the goods – and which are not named in sanction lists drawn up by the EU or the UN, i.e. which are not subject to any embargo restrictions.

9. Any export to non-European Union countries or import into EU member states not accompanied by an export/import licence issued by the Federal Office for Industry or whose final recipient is named in sanction lists drawn up by the EU or the UN, or any use of the supplied goods that has not been approved by the Federal Office for Industry – unless expressly agreed otherwise in the terms of delivery – is unlawful and triggers the ordering party's liability to pay compensation to the Supplier.

II. Price and payment

1. In the absence of any specific agreement, prices shall be charged ex works including loading at works but exclusive of packing and unloading. Sales tax in the relevant legal amount shall be applicable at the appropriate legal amount.
2. In the absence of any specific agreement payment shall be made to the account of the supplier without any deductions as follows:
30 % deposit upon receipt of the order confirmation with the remainder due within one month following transfer of risk.
3. The purchaser shall only be entitled to withhold payment or to set off against counterclaims inasmuch as his counterclaims are undisputed and have been found to be legally binding.

III. Delivery period, delays in delivery

1. The delivery dates and deadlines indicated by the supplier are non-binding unless otherwise expressly agreed. If the non-binding delivery date or the non-binding deadline is exceeded by 6 weeks due to a failure on the part of the supplier, the purchaser shall be entitled to withdraw from the contract after setting a reasonable extension period for the supplier.
2. In all cases, the observation of delivery periods by the supplier shall be dependent upon all commercial and technical matters having been clarified between the contractual parties and the purchaser having performed all obligations, such as provision of certification required by authorities, authorisations, or the payment of a deposit. Should this not be the case the delivery time shall be extended appropriately. This shall not apply in cases in which the supplier bears responsibility for the delay.
3. The delivery period shall be deemed to have been observed when the delivery item has left the supplier's premises prior to the end of that period or readiness to ship has been notified. Inasmuch as acceptance has to be arranged - except in the case of a justified refusal of acceptance - the date of acceptance or alternatively notification of readiness to accept shall be definitive.
4. Should shipping or acceptance of the delivery item be delayed for reasons for which the purchaser is accountable, such costs that have arisen because of this delay shall be chargeable to him commencing 14 days following notification of readiness to ship or readiness to accept.
5. Delays due to force majeure or events that significantly hinder or prevent the supplier from providing goods and services – such events also include subsequently occurring material procurement difficulties, operational interruptions, strikes, lock-outs, staff shortages, transportation shortages, official directives etc., including such events suffered by the supplier's suppliers or subcontractors – shall not be considered the responsibility of the supplier even for contractually binding deadlines and delivery dates, unless the failure to deliver was caused by the supplier itself, or the supplier was already in default on the delivery. Such delays shall entitle the supplier to postpone the provision of goods or services by a period equivalent to the duration of the hindrance plus a reasonable lead time, but not exceeding 4 months, provided the supplier notified the purchaser of the hindrance and its anticipated duration as soon as the hindrance occurred.
6. The purchaser shall be entitled to withdraw from the contract without setting a deadline should performance of the full service to be provided become impossible prior to transfer of risk. The purchaser shall furthermore be entitled to withdraw from the contract should the execution of a part of the delivery become impossible and he has justified interest in rejecting a partial delivery. Should this not be applicable the purchaser shall be obliged to pay the amount of the contractual price which refers to the partial delivery. This shall also apply in the case of impossibility of the supplier to fulfil the contract. Section VII shall also apply.
Should the impossibility or inability arise during the delayed acceptance or should the purchaser be solely or mainly responsible for these circumstances he shall be obliged to provide consideration.

7. Should the supplier fall into delayed performance and financial damage be incurred by the supplier he shall be entitled to demand flat-rate compensation for delay. For each complete week of delay this shall amount to 0.5%, at the maximum however 5% of the value of such part of the total delivery that could not be used in time or in accordance with the contract because of the delay, unless the supplier can prove to the client that the financial damage incurred was only minimal. In the event of such proof being provided only the actual level of financial damage incurred shall be payable.

Should the purchaser - taking into account legal exceptions - set a reasonable deadline for fulfilment after the due date and this deadline not be met, the purchaser shall be entitled to withdraw from the contract in accordance with law.

Further claims in connection with delays in delivery shall be exclusively regulated in accordance with section VII of these conditions.

IV. Transfer of risk, acceptance

1. Risk is transferred to the purchaser when the delivery item has left the works, which shall also apply in the case of part deliveries or the supplier having agreed to provide other services such as shipping costs, delivery and assembly. Inasmuch as acceptance is required it shall be decisive in terms of transfer of risk. This must be performed immediately on the date of acceptance or alternatively upon notification of readiness to accept having been provided by the supplier.

The purchaser shall not be entitled to refuse acceptance in the event of a minor fault.

2. Should shipping be delayed as the result of circumstances for which the supplier is not accountable, the transfer of risk to the purchaser shall become effective upon the actual day of notification of readiness to ship or readiness to accept. The supplier undertakes to take out such insurance cover required by the customer for the account of the customer.

3. Part deliveries shall be permitted inasmuch as they are reasonable for the purchaser.

V. Reservation of title

1. In the event of contracts with companies the supplier shall retain title to the items supplied until such time as the customer has performed settlement of all financial claims against him by the supplier, including possible future claims. The customer shall not be entitled to pledge or assign the reserved products as security. The purchaser shall however be entitled to resell or reprocess the products within the normal course of business unless it has previously assigned its claims upon the contractual partner to a third party.

2. Any processing of the supplier's product by the purchaser to a new movable shall be performed on behalf of the supplier with the understanding that no obligations shall thereby be incurred for the latter. The supplier already cedes joint ownership of the new item to the purchaser at this stage in the ratio of the comparative value to the original value of the product provided by the supplier. The purchaser shall keep the item in custody at no charge with the due care and diligence of a prudent businessman. Should the purchaser combine, mix or blend the supplier's products with other movables into a new uniform item to which he acquires sole or joint title, the purchaser shall already transfer to the supplier this title to the new item in the ratio of the value of the supplier's product to the new item as security for the settlement of the claims listed under section V.1 and shall undertake to keep the item in good order for the supplier at no charge.

3. As security against the settlement of claims of the supplier according to section V.1, the purchaser shall already assign to the supplier all future claims from any resale of the supplier's products together with all ancillary rights in the amount of the value of the supplier's products with rank in priority to the rest.

Should the purchaser combine, mix or blend the supplier's products with other products not belonging to the supplier and sell these or combine mix or blend the supplier's products with a third party piece of land or movable and the purchaser acquires a claim thereby that also covers his other services, the purchaser shall already assign to the supplier this claim together with all ancillary rights in the amount of the value of the

products with rank in priority to the rest. This shall apply to the same extent to any rights of the purchaser to cede securities in accordance with §§ 648, 648a BGB (German Civil Code) as a result of the processing of the supplier's products and in the amount of the full value of the supplier's unsettled claims. The supplier shall herewith accept the purchaser's declaration of assignment. At the request of the supplier, the purchaser shall be required to make individual details of these claims known and to advise third-party debtors of the assignment while requesting that payment be made to the supplier up to the amount of the claims in accordance with section V.1.

The supplier shall be entitled to also notify third-party debtors at any time of the assignment and recover the claims. The supplier shall however not exercise this authority and shall not recover the claims inasmuch as the purchaser has fulfilled his payment obligations in good order. The purchaser shall not be entitled to assign or pledge to anyone else his claims upon third party debtors or to agree upon non-assignment with third party debtors.

4. In the case of sales on account the supplier's securities shall apply as security for the settlement of the supplier's balance claim. The purchaser shall be required to inform the supplier immediately in advance prior to any assignment or other influence upon the rights of the supplier involving third parties. The purchaser shall be required to provide the supplier with all documents required for an intervention and to bear in full the costs of such intervention incurred by the supplier.

5. In the case of purchasers who are consumers in the sense of § 13 BGB, simple reservation of title shall apply to the claim from the acquisitional transaction. The supplier shall retain title to the products supplied until the complete settlement of the supplier's claims in accordance with section V.1 together with all related ancillary claims (e. g. bill of exchange costs, interest). In this case, any processing of the products by the purchaser shall also always be deemed to have been performed on behalf of the supplier. The reversionary interest of the supplier shall continue in the processed products. Should the purchaser use other items that are not the property of the supplier and process these or inseparably mix them with the supplier's products into a movable, the supplier shall acquire joint title to the new item in ratio between the objective value of the item supplied and the third party items at the time of mixing or processing.

6. The supplier undertakes to release upon request from the purchaser the securities upon which he has claim to the extent that the realisable value of the securities exceeds the claim to be secured by more than 10% or exceeds the nominal amount by more than 50%; the choice of the securities to be released shall be the decision of the supplier.

VI. Claims for defects

The supplier shall provide guarantees for material defects or defects on title concerning the goods supplied – excluding further claims and subject to section VII – as follows:

Material defects

1. All parts that are found to be defective as defined in the following provisions as a result of any circumstance prior to transfer of risk shall be reworked or replaced at no charge in accordance with the preference of the supplier. The establishment of such defects shall be notified immediately to the supplier. Replaced parts shall become the property of the supplier.

2. In all cases, the purchaser must allow the supplier a reasonable period in which to make all repairs and replacement deliveries that the supplier deems necessary; otherwise, the supplier shall be released from liability for the consequences arising therefrom. The purchaser must inform the supplier immediately of urgent cases involving a threat to operational safety and/or to prevent disproportionate damage, and must agree with the supplier as to whether the supplier is willing to correct the defect itself, or whether and to what extent the purchaser can correct the defect itself or by the services of a third party by substitution, and in the latter case request compensation from the supplier for the expense incurred. If the purchaser fails to provide such immediate notification and reach such agreement with the supplier in the cases described in the preceding clause, the supplier shall not be obliged to compensate the purchaser for expenses incurred as a result of any execution by substitution unless the notification and agreement were impossible due to a failure on the part of the supplier.

3. The direct costs involved with performance of reworking or supply of replacements shall be borne by the supplier - provided that the complaint is deemed to be justified. The costs of transport and shipping, the costs of disassembly and installation, and the costs of deploying any essential fitting and labouring personnel, including travelling expenses, must be borne by the purchaser if such costs are incurred because the product has been moved to a location other than the place of fulfilment.

4. The purchaser shall be entitled to withdraw from the contract in accordance with the law if the supplier fails to observe - taking into account legal exceptions - agreed deadlines for reworking or supply of replacements following a material defect. Should a defect be of a minor nature, the purchaser shall only be entitled to a right of reduction of the contractual price.

Further claims shall be subject to section VII of these conditions.

5. A guarantee shall specifically not be provided in the following cases:

Unsuitable or inappropriate handling, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, incorrect or neglectful handling, inadequate maintenance, unsuitable resources, defective building work, unsuitable foundations, chemical, electro-chemical or electrical influences - inasmuch as the supplier is not accountable for these.

6. Should the purchaser or any third party perform any repairs in an inappropriate manner the supplier shall not bear liability for any consequences that may arise. This shall equally apply to changes made to the delivery item without prior agreement having been granted by the supplier.

Defects on title

7. Should the use of the delivery item lead to the violation of industrial property rights or copyrights in the domestic market, the supplier shall procure at his expense the fundamental right of the purchaser to continued use or shall modify the delivery item in a manner deemed to be reasonable for the purchaser, in order that property rights violation no longer exists.

Should this not prove to be possible under reasonable economic conditions or within an appropriate time, the supplier shall also be entitled to withdraw from the contract. The supplier shall also be entitled to the right to withdraw from the contract in accordance with the conditions named.

Furthermore the supplier shall secure a release for the purchaser from undisputed or legally binding claims by the respective holder of industrial property rights.

8. The obligations of the supplier stated in section VI.7 are subject to section VII. 2 in being definitive in the case of violation of industrial property rights or copyright.

They apply only when

- the purchaser advises the supplier immediately of claims of the violation of industrial property rights or copyright having been made,
- the purchaser renders the supplier reasonable support in defence against such claims that have been made, or facilitates the modification measures listed in section VI. 7,
- the supplier reserves the right to all preventive measures including out-of-court settlement,
- the defect on title was not involved with any instruction having been issued by the purchaser and
- the legal violation was not caused by the purchaser having changed the delivery item of his own volition or his having used it in any other way that is not in accordance with the contract.

VII. Liability

1. Claims made by the purchaser, in particular damages claims concerning loss of profits or capital shall be excluded inasmuch as the damage was not caused intentionally or by the gross negligence of the supplier, his legal representatives or vicarious agents.

This liability limitation shall not apply in the case of culpable damage to life, body or health.

2. This liability limitation shall furthermore not apply if the purchaser shall make claims for damages because of the non-fulfilment of any agreed aspect of design or construction.

3. This liability limitation shall furthermore not apply if an essential obligation (cardinal duty) of the contract is culpably violated. If an essential obligation of the contract is violated by carelessness the liability of the supplier shall be limited to the anticipated damage.

4. The liability limitation shall not apply in the case of defects of the delivery item inasmuch as liability for personal or material damage caused by privately-used items exists in accordance with product liability legislation. The liability shall be restricted to the scope of the supplier's product liability insurance.

VIII. Limitation

All claims made by the purchaser - irrespective of their legal nature - shall be limited to a period of 12 months. Damages claims in accordance with section VII 2.a – e shall be subject to the legal periods. These shall also apply for defects of a building or for delivery items that were used for a building in accordance with their usual manner of use and that have caused defects thereto.

X. Applicable jurisdiction, place of jurisdiction, and place of fulfilment

1. The law of the Federal Republic Germany for legal relationships between domestic parties shall govern all legal relationships between the supplier and the purchaser.

2. The place of jurisdiction shall be the domicile of the supplier. The supplier shall however be entitled to institute proceedings at the headquarters of the purchaser.

3. The place of fulfilment is the domicile of the supplier. This shall apply even if the supplier shipped the product to a delivery address specified by the purchaser at the supplier's own expense.