

General Terms and Conditions of Delivery and Payment

1. General agreements

All the contractual relationships between the ordering party and Uhlig Rohrleitungskomponenten GmbH – hereinafter referred to as “contractor” – are subject exclusively to these General Terms and Conditions of Delivery and Payment. The ordering party’s general business terms and conditions are only applicable provided that the contractor has explicitly agreed to any of these in writing. Even if the contractor makes reference to a written document containing or referring to the ordering party’s or a third party’s general business terms and conditions, this does not infer any agreement with the applicability of any such general business terms and conditions. Verbally reached ancillary agreements are not effective. These Terms and Conditions also apply to any future business transactions between the contracting parties, even if these Terms and Conditions are not expressly agreed again.

Any transfer of the ordering party’s rights and obligations arising out of this contract require the contractor’s prior written consent.

2. Offers

All offers are subject to change without notice and without obligation, unless expressly indicated as binding or contain a specific closing date for acceptance. Awarded orders shall only be deemed accepted by the contractor when they have been confirmed in writing. In particular, verbal details regarding the design, dimensions, etc. for custom-made productions require confirmation in writing.

3. Prices

Our prices are ex-works, unless other provisions have been agreed for individual product groups. The prices are quoted and charged in euros (EUR). If the invoicing is to be based on a different currency, this shall be expressly agreed. In this case, the ordering party shall be responsible, if required, for procuring any foreign-currency permits at his own expense.

4. Delivery time

The delivery periods specified are not binding but will, however, be met under normal business conditions, if possible. The delivery period only commences on the day our order confirmation is issued in writing, but not before all the details regarding the execution of the order have been clarified by the ordering party. If the contract is based on working drawings, the former only comes into force when the drawings, checked and approved by the ordering party, have been returned to us. The delivery deadlines and delivery dates refer to the point in time when the goods are dispatched from the factory. They shall be deemed as met based on the date the notification of readiness for dispatch is issued, if the goods cannot be sent in time for reasons that are no fault of our own. The agreed delivery time shall be extended – without prejudice to our rights arising from any default by the ordering party – by a period of time equivalent to that the ordering party is in arrears with his obligations pursuant to this or any other agreement with us. Besides a potential default in payment, this also affects a default resulting from a delay in the full or partial provision of materials by the ordering party.

The contractor shall not be held liable for the impossibility of the delivery or for delays in delivery, if these are caused by force majeure or other events not foreseeable at the time the contract was concluded (e.g. operational disruptions of any kind, difficulties in procuring material or energy, transport delays, strikes, lawful lockouts, lack of labour, energy or raw materials, difficulties in procuring the necessary official permits, official measures, or the outstanding, incorrect or delayed delivery by the supplier) that the contractor is not responsible for. If such events make it significantly more difficult or make it impossible for the contractor to perform delivery of the goods or services and the impediment is not just temporary in nature, the contractor is entitled to withdraw from the contract. Where the impediment is only temporary, the delivery dates and periods are extended or the delivery dates and periods are postponed by the period of time the impediment exists plus a reasonable restart period. If as a result of the delay, one cannot reasonably expect of the ordering party that he accept the delivery of goods or services, he is entitled to withdraw from the contract by submitting an immediate declaration to the seller in writing.

If the contractor defaults on a binding delivery, the liability is limited according to Clause 10 of these General Terms and Conditions of Delivery and Payment.

5. Delivery, dispatch

Delivery is performed from our factory at the ordering party’s risk. This also applies if no specific agreement has been made for delivery by our freight forwarders and carriers. Goods reported as ready for dispatch in accordance with the contract shall be called without delay. Otherwise we are entitled to ship them using a transport service of our choice at the ordering party’s expense and risk or to store them at our own discretion and issue an invoice for them immediately. Decisive for the invoicing is the weight and/or number of items ascertained upon dispatch. Part-shipments are deemed agreed and are processed as an independent transaction. The packaging expenses shall be borne by the ordering party. Crates, boxes and similar packaging will be charged at factory cost and are non-returnable.

6. Tools and appliances

For tools and appliances needed for the production of an order placed with us or for such tools and appliances that have to be specially made for this, we only charge the pro rata costs. The respective tools and appliances remain our property.

7. Reservation of proprietary rights

a. The delivery item remains the property of the contractor until all the contractor’s justified claims against the ordering party arising out of this business relationship have been fulfilled.

b. The ordering party is permitted to convert or reshape (“Conversion”) the delivery item. The conversion is performed for the contractor. However, if the value of the delivery item belonging to the contractor is lower than the value of the goods not belonging to the contractor and/or the conversion, the contractor acquires part-ownership in the new goods pro rata of the value (gross invoice value) of the converted delivery item to the value of the other converted goods and/or the conversion at the time of the conversion. If the contractor does not acquire part-ownership of the new goods in accordance with the aforementioned, the contractor and ordering party are in agreement that the ordering party shall grant the contractor part-ownership of the new goods pro rata of the value (gross invoice value) of the delivery item belonging to the contractor at the value of the other converted goods at the time of conversion. The aforementioned sentence applies mutatis mutandis in the case of irreversible amalgamation or if the delivery item is connected to goods not belonging to the contractor. If the contractor acquires ownership or part-ownership according to this provision (Reservation of proprietary rights), the ordering party shall store the goods for the contractor with the due care of a prudent and reasonable businessman.

c. In the case of a sale of the delivery item, the ordering party herewith assigns his claim out of the resale against his buyer with all the ancillary rights by way of security to the contractor who already accepts this now, without the need for any further declarations. The assignment applies inclusive of any potential outstanding balance claims. However, the assignment only applies up to the first-priority amount which is equivalent to the price of the delivery item invoiced to the ordering party. Fulfilment of the pro rata claim assigned to the contractor shall be prioritized.

d. If the ordering party connects the delivery item to properties (real estate), he also assigns to the contractor accepting this – without the requirement for any further declarations – the claim that he is entitled to as remuneration for the connection equivalent to the amount specified as the price for the delivery item in the invoice.

e. Until revoked by the contractor, the ordering party has the right to enforce the claim assigned to the contractor in accordance with this provision (Reservation of proprietary rights). The ordering party shall immediately forward any payments to the contractor made on the assigned claims up to the value of the secured claim. If there are any legitimate interests, in particular relating to a default in payment, stoppage of payment, opening of insolvency proceedings, protest of a bill of exchange or justified reasons for the assumption of heavy indebtedness or imminent danger of insolvency of the ordering party, the contractor has the right to revoke the ordering party’s authorisation to enforce any claims. In addition the contractor can, upon giving reasonable notice, disclose the assignment for security, utilise the assigned claims, and demand that the ordering party disclose the assignment for security to the buyers.

f. If a legitimate interest is substantiated, the ordering party shall immediately provide the contractor with the information necessary for the contractor to enforce his rights against the buyer, and hand over the necessary documents.

g. While a reservation of proprietary rights is in existence, the ordering party is not permitted to pledge the goods or perform a transfer by way of security. In cases of attachments, confiscation or other powers of disposal or interventions by third parties, the ordering party shall inform the contractor at once. The resale of the delivery item is only allowed to be performed by resellers in the course of ordinary business and only with the proviso that payment of the countervalue of the delivery item to the ordering party is effected. The ordering party shall also make an agreement with the buyer that the buyer only acquires ownership upon this payment.

h. In case of any breaches of duty by the ordering party, in particular regarding defaults in payment, the contractor has the right, also without setting a deadline, to demand the handover of the delivery item and/or – where necessary after setting a deadline – to withdraw from the contract; the ordering party is obligated to hand over the goods. A demand that the delivery item be handed over does not constitute any cancellation of contract by the contractor, unless this is specifically declared.

8. Payment

The purchase price is due in full (without any deductions) on delivery. The ordering party shall be deemed in default, without any further declaration by the contractors, ten days after the due date, if he has not paid by then. In cases of default in payment, interest according to the applicable statutory rate will be charged on the outstanding payments. This does not affect the enforcement of higher interest rates and further damages in case of default. In cases of existing defects, the ordering party has the right to withhold payments, unless the goods delivered are obviously defective or the ordering party obviously has a right to refuse acceptance of the work performed. In such cases the ordering party only has the right to withhold payment if the withheld payment is reasonably proportionate to the defects and expected costs of supplementary performance (in particular in cases of defect rectification). The ordering party does not have the right to enforce claims or rights as a result of defects, if he has not made payment of due amounts, for the rest only if the due amount (including any advance payments made) is reasonably proportionate to the value of the – defective – goods delivered. Payment by way of bills of exchange from customers or acceptances by the ordering party is only permitted with prior written agreement with the contractor. We shall be immediately reimbursed by the ordering party with any costs resulting from payments by bills of exchange. Acceptances, bills of exchange and cheques shall only be deemed as payment after they have been cashed. Payment for wage labour is due immediately on receipt of the invoice, without any deductions.

Setting off counterclaims of the ordering party or withholding payments on account of such claims is only permitted if the ordering party’s counterclaim is undisputed or a legally enforceable title for this exists.

9. Warranty

a. Claims for defects cannot be made in cases of only minor deviation from the agreed quality or in cases of only slight impairment of the usability.

b. Whatever the case, the contractor is entitled to choose between repair and replacement. The ordering party’s request for supplementary performance shall be made in writing. The contractor shall be granted a period of four weeks for the supplementary performance. If the goods delivered are to be rectified, the rectification shall only be deemed failed after the second unsuccessful attempt. If the supplementary performance is unsuccessful, the ordering party has the right to reduce the remuneration or – provided the defect liability matter is not related to construction work – he can choose to withdraw from the contract. The statutory regulations concerning the dispensability of fixing a time limit remain unaffected. The applicability of §§ 478, 479 BGB (Entrepreneur’s right of recourse) remains unaffected.

c. The expenses necessary to carry out the supplementary performance shall be borne by the ordering party, if they are higher as a result of the delivery being effected at a place other than the ordering party’s premises. The applicability of § 478 BGB (Entrepreneur’s right of recourse) remains unaffected. Without prejudice to any further claims the contractor may have, in the case of an unjustified notice of defects, the ordering party shall reimburse the contractor with the expenses for the testing and – if demanded – for the rectification of the defect.

d. The limitation period for claims and rights arising out of defects in the goods – regardless of the legal grounds – is one year. However, this does not apply in the cases of § 438 Sec. 1 No. 1 BGB (Defects of title in the case of immovables), § 438 Sec. 1 No. 2 BGB (Buildings, things for buildings), § 479 Sec. 1 BGB (Entrepreneur’s recourse claims) or § 634a Sec. 1 No. 2 BGB (Buildings or constructions whose result consists in the rendering of planning or monitoring services for this purpose). The cases exempt in the aforementioned Sec. 2 are subject to a limitation period of three years. These limitation periods also apply to any damage compensation claims against the contractor that are connected to the defect – regardless of the legal grounds of the claim. If any damage compensation claims whatsoever against the contractor exist that are not in connection with a defect, these are also subject to the limitation periods of one year. The aforementioned provisions are not connected with any disadvantageous changes to the ordering party’s onus of proof.

However, the aforementioned limitation periods apply with the following proviso:

The limitation periods generally do not apply in cases caused by intent or fraudulent concealment of a defect. Moreover, the limitation periods do not apply in cases of grossly negligent breach of duty, injury to life, body or health, or claims that fall under the Product Liability Act. The limitation periods for damage compensation claims also apply to the reimbursement of expenses disbursed in vain.

e. For all claims, the limitation period commences with the delivery, for work performances upon acceptance.

10. Liability

a. The contractor is liable in cases caused by intent or gross negligence by the contractor or his representative or a person used to perform an obligation of the contractor as well as for injury to life, body or health caused by slight negligence according to the legal regulations. In cases of gross negligence, the contractor’s liability is limited to the contractually typical foreseeable damage, unless one of the exemption cases listed in section 1 or section 3 of this paragraph exists at the same time. For the rest, the contractor is only liable according to the Product Liability Act or as a result of culpable violation of key contractual duties or if the contractor has fraudulently concealed the defect or furnished a guarantee for the quality of the delivery item. However, the compensation claim for the violation of key contractual duties is limited to the contractually typical foreseeable damage, unless one of the exemption cases listed in section 1 or section 3 of this paragraph exists at the same time.

b. The provisions according to the aforementioned paragraph (Clause 10 a.) apply to any compensation claims (in particular from a default in payment, for compensation payment besides the performance and compensation payment instead of the performance), regardless of the legal grounds, in particular due to defects, the violation of duties arising from the obligation or from tort. They also apply to claims for reimbursement of expenses disbursed in vain.

c. Furthermore, indirect damages and consequential damages which are consequences of defects in the delivery item are only reimbursable, if such damages can typically be expected with proper use of the delivery item for the purpose it was intended.

d. Liability for third-party damages is excluded.

e. If the contractor renders technical information or becomes active in a consulting capacity and such consultation is not included in the contractually agreed scope of delivery owed by him, this is performed free of charge and no liability whatsoever is assumed in this connection.

f. The aforementioned provisions are not connected with any disadvantageous changes to the ordering party’s onus of proof.

11. Documents, drawings

Any documents, drawings, models, etc. made available to the ordering party by the contractor remain the property of the contractor and shall only be used by the ordering party as part of the purpose of the contract. The ordering party shall not duplicate these documents or make them available to third parties. The contractor reserves the title of ownership and the industrial property rights to all of the drawings and documents made available to the ordering party.

12. Final provisions

a. The place of performance for both parts is Langelsheim.

b. The legal relations between the parties shall be governed by German law. UN sales law (CISG) and German International Civil Law are not applicable.

c. The sole place of jurisdiction for any disputes arising out of the contractual relationship is the seat of the contractor.

d. Should individual provisions of the contract or of these General Terms and Conditions of Delivery and Payment be or become invalid or legally unenforceable in whole or in part, the validity of the remaining provisions shall not be affected. The provision which is invalid or unenforceable shall be replaced with a provision that comes closest to achieving the commercial intentions of the contractual parties. If the General Terms and Conditions of Delivery and Payment contain any unintended omissions, these unintended omissions shall be deemed as having been replaced by the legally effective provisions that the parties would have agreed upon had they been aware of the unintended omission at the time of concluding the contract, taking into account the economic intent of the contract or the purpose of the these General Terms and Conditions of Delivery and Payment.

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