

General Terms of Delivery of Apex Tool Group GmbH for Products and Services of the Electrical Industry to be used in Business Dealings with Enterprises

I. General Provisions

1. For the scope of deliveries and services (hereinafter: deliveries) the mutual statements in writing are definite. General Terms and Conditions of Trade of the customer, however, are only effective in so far as the supplier or service provider (hereinafter: supplier) has explicitly agreed to them in writing.
2. The supplier unlimitedly reserves the right to exploit all his property rights or copyrights of estimates, drawings and other documents (hereinafter: documents). The documents are only to be made available to third parties after prior permission of the supplier and have to be returned at request immediately if the order is not given to the supplier. The sentences 1 and 2 are valid for documents of the customer correspondingly; these, however, may be made available to such third parties to which the supplier has permissibly delegated supply or service.
3. The customer has the non-exclusive right of use of standard software with the performance features agreed upon in unchanged form at the agreed computers. The customer may make a back-up copy without explicit agreement.
4. Partial deliveries are permissible as far as they are within the bounds of what is reasonable for the customer.

II. Prices and Terms of Payment

1. The prices are valid ex works excluding packing plus the relevant legal sales tax.
2. If the supplier has taken on the installation or assembly and nothing else has been agreed, the customer bears, apart from the agreed compensation, all necessary extra costs, such as travel expenses, transport costs for the tooling and the personal luggage as well as field allowances.
3. Payments are to be realized free to the point of payment of the supplier.
4. The customer may only set-off claims which are not contested or have been ascertained with res iudicata effect.

III. Reservation of Property Rights

1. The objects of the deliveries (reserved goods) remain the property of the supplier until all of the claims resulting from the business relationship to the customer have been paid. If the realizable value of the securities of the supplier exceed the receivables to be secured by more than 20%, the supplier will release securities at the request of the customer.
2. As long as the reservation of property rights is in existence, the customer is prohibited to make pledges or security transfers and he may only resell to resellers by common business routine and under the condition that the reseller receives payment from his customer or with the reservation that title passes to the customer only after he has met his payment obligations.

3. In case of seizure, confiscation or other third party interventions the customer has to inform the supplier immediately.
4. In case of delay of payment on part of the customer, the supplier is entitled to rescind the contract and to take back the goods after having set an appropriate deadline for performance; the legal provisions on the dispensability of setting a deadline remain unaffected. In other cases of breach of duty, especially in case of endangering the purchased goods, the supplier is allowed to take back the purchased goods without rescission of the contract. The customer has to hand over the purchased goods.

IV. Deadline for Deliveries; Delay

1. The compliance with the deadline for deliveries requires the timely receipt of the complete documents to be supplied by the customer, necessary permissions, releases, especially for plans, as well as the compliance with the agreed terms of payment and other duties. If these requirements are not fulfilled in time the deadline will be prolonged adequately unless the supplier is responsible for the delay.
2. If the non-compliance of the deadline is attributed to force majeure such as mobilization, war, riot or similar occurrences such as strike or lockout, the deadline is prolonged adequately.
3. If the supplier comes into default, the customer may – as far as he proves that he experienced a damage from this – charge a compensation for every completed week of delay of 0.2%, however, in total not more than 2% of the price for the part of the delivery which could not be started up usefully due to the delay.
4. Claims for damages of the customer due to delay in delivery as well as claims for damages in lieu of performance, which exceed limits as stated under no. 3 above, are excluded in all cases of delayed delivery, also after expiry of a set deadline for delivery to the supplier. This does not apply in cases of mandatory liability, such as cases of intention, gross negligence or injury to life, body or health. The customer may only rescind the contract within the bounds of legal provisions, if the delay in delivery is attributable to fault of the supplier. A change of burden of proof to the disadvantage of the customer is not deemed to be caused by the aforementioned regulations.
5. The customer is obliged to declare at the request of the supplier within an adequate period of time, if he rescinds the contract due to the delay in delivery or if he insists on delivery.
6. If the dispatch or delivery is delayed at the request of the customer more than one month after the announcement of readiness to dispatch, the customer may be charged for every started month storage charges of 0.2% of the price of the goods to be delivered, however, in total not more than 2%. Both parties to the contract are free to prove higher or lower storage costs.

V. Passage of Risk

1. The risk passes over to the customer, even if carriage paid has been agreed for the delivery, as follows:
 - a) in case of delivery without installation or assembly, when the goods have been dispatched or picked up. At the request and costs of the customer the deliveries are insured against the usual transport risks by the supplier;
 - b) in case of delivery with installation or assembly on the day of taking into own operation, or as far as trial operation has been agreed, after flawless trial operation.
2. If the dispatch, the delivery, the beginning or the realization of the installation or assembly, the taking into own operation or the trial operation is delayed for reasons which have to be justified by the customer or the customer delays the taking on of the goods for other reasons, the risk passes over to the customer.

VI. Installation and Assembly

For the installation and assembly the following regulations apply as far as nothing else has been agreed in writing:

1. The customer has to bear also his costs and make timely available:
 - a) all excavations, construction work and other new to the trade secondary jobs, including all for that purpose required supporting staff, skilled workers, building materials and tools,
 - b) necessary goods and materials which are required for assembly and starting up, such as scaffolding, lifting gears and other devices, fuel and lubricants,
 - c) power and water to the position of application, including the necessary supplies, heating and lighting,
 - d) at the installation site sufficient large, suitable dry and lockable rooms for the safekeeping of machine parts, equipment, materials, tools, etc. and for the installation staff adequate workrooms and lounges, including according to the circumstances adequate sanitary facilities; as for the rest the customer has to take measures, which he would take to safeguard his own property, to safeguard the property of the supplier and the installation staff at the building site,
 - e) protective clothing and safety devices which are necessary as a result of special circumstances at the installation site.
2. Before beginning the installation work the customer has to provide the necessary information about the position of hidden circuit-gas-water-lines or similar installations as well as make the necessary static information available without being asked.
3. Before beginning the installation or assembly, the components and objects required for taking up the work have to be on the spot of installation or assembly and all preparatory work has to have to be so progressed that the installation or assembly can be started as agreed and carried out without interruption. Delivery ways and the installation and assembly site have to be leveled and cleared.
4. If the installation, the assembly or the starting up is delayed by facts which are not attributable to fault of the supplier, the customer has to bear in an adequate extent the costs for the waiting period and additionally necessary trips of the supplier or the installation staff.

5. The customer has to report the working time of the installation staff to the supplier on a weekly basis as well as the completion of the installation, assembly or taking into operation immediately.
6. If the supplier requires inspection and approval of the delivery after completion of the work, the customer has to realize this within two weeks. If he fails to do so, the inspection and approval is considered to be carried out. This is also the case, if the delivery – if necessary after an agreed trial period – has been taken into operation.

VII. Acceptance

The customer may not refuse acceptance of deliveries if these show only immaterial defects.

VIII. Material Defects

The supplier is liable for material defects as follows:

1. All parts or services showing a material defect have to be put right, replaced or realized again free of charge by the supplier, if the material defect already existed at the time of passage of risk.
2. Claims for material defects come under the statute of limitations within 12 months. This does not apply in cases where the laws according § 438 para. 1 no. 2 (buildings and material for buildings), § 479 para. 1 (right of recourse) and § 634 a) para. 1 no. 2 (defects of building work) of the German Civil Code (BGB) stipulate longer periods of time as well as in cases of injury of life, body or health, an intentional or gross negligent breach of duty by the supplier and fraudulent non-disclosure of a defect. The statutory regulations regarding suspension of the statute of limitations, suspension and new beginning of the period of time stay untouched.
3. The customer has to complain about material defects immediately in writing towards the supplier.
4. In case of complaints the customer may withhold payment to an extent appropriate to the material defects occurred. The customer may only withhold payments if a complaint has been asserted which is doubtlessly justified. If the complaint has been made wrongly the supplier is entitled to hold the customer responsible for the expenditure caused.
5. First the supplier has to have the opportunity to realize a subsequent performance within a reasonable period of time.
6. If the subsequent performance fails to work out, the customer may – regardless of possible claims for indemnification according to Section XI – rescind the contract or reduce the consideration.
7. Warranty claims do not exist in case of immaterial deviations from the agreed quality, immaterial shortcomings as to usefulness, natural wear or damages, which after passage of risk emerged from faulty or careless treatment, excessive use, inappropriate operating resources, poor construction work, inappropriate plot of land or of special outer influences, which are not taken for granted in the contract, or in case of software defects which cannot be reproduced. If changes or

maintenance are realized by the customer or a third party improperly, no warranty claims for these and for the resulting consequences are accepted.

8. Claims of the customer regarding necessary expenses for the purpose of subsequent performance, especially for costs arising from transport, ways, labor and material, are excluded as far as the expenses increase because the delivery object has been brought later to a spot other than the site of the customer, unless the transfer is in accordance with the intended use.
9. Rights of recourse of the customer against the supplier according to § 478 BGB (recourse of the entrepreneur) do only exist in so far as the customer has not agreed to any clauses with his buyer which surpass the legal warranty. For the extent of the right of recourse of the customer against the supplier according to § 478 para. 2 BGB no. 8 is also valid correspondingly.
10. Furthermore, Section XI is valid for claims for damages (further claims for compensation). Farer-reaching claims or other claims than those regulated in this Section VIII from the customer against the supplier and his agents of vicarious liability due to material defect are excluded.

IX. Industrial Property Right and Copyrights; Defects as to Title

1. If not agreed otherwise, the supplier is obliged to make delivery only in the country of destination free of industrial property rights and copyrights of third parties (hereinafter: IP Rights). Provided that a third party brings justified claims against the customer due to a violation of IP Rights by deliveries produced by the supplier, which are used in accordance with the contractual terms, the supplier is liable to the customer within the time period determined in Section VIII no. 2 as follows:
 - a) The supplier will at his discretion and at his own expense either obtain a right of use for the deliveries concerned, change them to the effect that the IP Right is not violated or substitute them. Should this not be possible for the supplier under appropriate conditions, the customer is entitled to make use of his legal rescission or reduction rights.
 - b) The obligation of the supplier to pay damages is governed by the rules of Section XI.
 - c) The aforementioned obligations of the supplier do only exist, if the customer immediately informs the supplier in writing about the claims brought by a third party, does not acknowledge any violation, and all defense measures and settlement negotiations are left to the supplier. If the customer stops using the delivery for reasons of reducing the damage or other cause, he is obliged to point out to the third party that the stopping is not associated with acknowledgement of any violation of IP Rights.
2. Claims of the customer are excluded as far as the violation of IP Rights is attributable to him.
3. Moreover, claims by the customer are excluded, if the violation of IP Rights has been caused by special guidelines of the customer, by a use of the delivery unforeseeable to the supplier or by a change of the delivery by the customer or by using the delivery together with products which have not been delivered by the supplier.

4. In case of violations of property rights the provisions of Section VIII no 4, 5 and 9 apply to the claims of the customer as set forth under no. 1, letter a, correspondingly.
5. In case of any other defects as to title the provisions of Section VIII apply correspondingly.
6. Farer-reaching claims or claims other than those provided for in this Section IX against the supplier and his agents of vicarious liability for legal deficiencies are excluded.

X. Impossibility; Contract Adjustment

1. Should the delivery be impossible, the customer is entitled to claim damages, unless the impossibility is not attributable to the supplier. The claim for damages of the customer, however, is limited to 10% of the value of that part of the delivery which cannot be used properly due to the impossibility. This limitation does not apply to cases where liability has to be accepted owing to intention, gross negligence or due to injury of life, body or health; a change of burden of proofs to the disadvantage of the customer is not deemed to be caused by this. The right of the customer to rescind the contract remains unaffected.
2. If unforeseeable events in the sense of Section IV no. 2 change the economic importance or content of the delivery considerably or have a considerable impact on the business of the supplier, the contract is adjusted appropriately taking equity into account the concept of good faith. Should this not be justifiable economically, the supplier is entitled to rescind the contract. If he wants to make use of this right of rescission he has to inform the customer immediately after having assessed the extent of the events, even if an extension of the delivery time has been arranged with the customer.

XI. Other Claims for Compensation

1. Claims for damages and claims for expense compensation of the customer (hereinafter: claims for damages), irrespective of its legal cause, especially because for breach of contractual duties, are excluded.
2. This does not apply in cases of mandatory liability, e. g. due to the law for product liability, in cases of intention, gross negligence, due to injury of life, body or health and due to the breach of essential contractual duties. The claim for damages for the breach of essential contractual duties, however, is limited to the foreseeable damage for this type of contract, as far as there is no intention, gross negligence or liability due to injury of life, body or health. A change of the burden of proof to the disadvantage of the customer is not deemed to be caused by the above mentioned provision.
3. As far as the customer is entitled to claims for damages according to this Section XI, they fall under the statute of limitations with the expiry of the statutory period of limitation which apply to claims for material defects according to Section VIII no. 2. For claims for damages according to the law for product liability the statutory periods of limitation apply.

XII. Jurisdiction and Applicable Law

1. Exclusive venue and jurisdiction is, if the customer is a merchant, with the courts having jurisdiction over the headquarters of the supplier for all disputes arising indirectly or directly from the contractual relationship. The supplier is, however, entitled to bring action at the court having jurisdiction over the headquarters of the customer.
2. For the legal relationship in connection with this contract German material law applies excluding the United Nations' Treaty on contracts for the international sale of goods.

XIII. Binding Effect of the Contract

The contract stays binding with the remaining parts even in case of legal invalidity of individual points. This does not apply if holding onto the contract would represent an unreasonable hardship for one party.