

Terms and conditions of business, supply and payment non-binding condition recommendations intended for voluntary use German Association of Paper and Film Packaging (IPV) general terms and conditions of business, supply and payment for the paper and plastics packaging industry for use in the course of business with companies

(Revised on 17.12.2014)

**I.
Scope of application**

1.

Quotations, sales and deliveries by the contractor are made on the basis of these general terms and conditions of business, supply and payment. The contractor's conditions of purchase or other unilaterally contradictory agreements are only considered to be accepted if they are confirmed by the contractor as an addendum to these general terms and conditions of business, supply and payment.

2.

Reference to or acknowledgement by the customer with reference to his conditions of purchase is hereby expressly repudiated.

**II.
Quotations and conclusion of an agreement**

1.

Notwithstanding contradictory written or oral agreements, the contractor's quotations are non-binding until accepted by the customer and can therefore be revoked by the contractor at any time before receipt of the customer's written declaration.

2.

Notwithstanding contradictory written or oral agreements, customers' quotations / orders shall be confirmed by the contractor in writing, by fax or in text form insofar as delivery or invoicing does not take place immediately.

3.

The customer is bound by his order / his quotation for ten working days. This period begins as from the time the order / quotation is received by the contractor. During this ten-day period the contractor is entitled to refuse to conclude this agreement. If no refusal takes place or if the goods are supplied within this period, the agreement becomes valid and binding without written confirmation of the order by the contractor.

4.

If alterations to the order are subsequently requested by the customer, these alterations are only effective if the contracting parties come to a mutual agreement regarding the alterations.

5.

The definitive quality of the delivery items owed by the contractor shall be the information contained in his specifications.

Information contained in catalogues, brochures, circulars, advertisements, illustrations and price lists does not determine the quality of the delivery items unless it is expressly included in this specification with reference to the specification.

6.

Information contained in the contractor's specifications for determining the quality of the delivery items shall not constitute a guarantee, in particular it shall not constitute a guarantee of durability.

The acceptance of guarantees and the procurement risk requires express agreement between the parties in which it is expressly declared that a guarantee and/or the procurement risk is accepted.

III. Prices

1.

The prices specified in the contractor's quotation are based on calculations existing at the time of the submission of the quotation. Should there be a significant change in raw material prices of at least 10 % (paper or plastic) following submission of the quotation / conclusion of the agreement with agreements lasting more than four months which are binding for one party, or in case of continuous obligations, the contractor is entitled to increase the agreed prices by the proportional additional cost. The customer shall be informed accordingly. This applies correspondingly for price decreases.

2.

In case of quantity/ weight variances which remain within the tolerances set out in Section VIII, prices are calculated on the basis of the actual delivery quantity/ delivery weight.

3.

Subsequent alterations requested by the customer, in particular to sketches, sketches, samples and test prints, shall be additionally invoiced to the customer.

4.

For wound products, the winding core inside the roll is included in the net weight.

For packaged products, the net weight is determined by subtracting the weight of the packaging from the total weight. The total weight is defined as the net weight plus packaging and is determined by weighing.

5.

Unless otherwise agreed, prices are ex works plus VAT at the rate currently applicable within the Federal Republic of Germany. Costs for transport, insurance, customs, etc. shall be invoiced separately.

IV.

Industrial property rights/ German Lifecycle Resource Management Act

1.

Printed documents provided by the contractor such as designs, drawings, printing plates, films, impression cylinders and plates remain the property of the contractor even if a proportion of the costs is refunded by the customer. In these cases the customer is, however, entitled to reimburse the proportion of the costs borne by the contractor in order to acquire ownership.

2.

Contractor's copyrights and/or industrial property rights arising through the development and performance of an order shall not be transferred along with the sale of the delivery item. This also applies if the customer bears a proportion of the development costs. The contractor is specifically entitled to exploit these copyrights and/or industrial property rights for orders from third parties.

3.

Unless otherwise agreed, the contractor is entitled to visibly affix his company emblem or an identification number to the delivery items produced.

4.

A fee shall still be paid for samples, sketches and designs, etc. expressly ordered or commissioned by the customer even if the main order for which the samples, sketches and designs, etc. are produced is not placed. The title transfers to the customer on payment of the fee.

5.

It is the customer's responsibility to check whether documents supplied by the customer infringe the rights of third parties, in particular copyrights, industrial property rights (design patents, patents, utility patents, trade marks). In case of claims made against the contractor by third parties due to the infringement of copyrights and/or industrial property rights or due to infringement of the law against unfair competition arising from the use, exploitation or duplication of the documents and/or templates supplied by the customer, the customer shall support the contractor in defending themselves against this infringement and to reimburse all losses, including lawyers' and trial costs which the contractor thus incurs.

V.
Obligations arising from the packaging regulations

1.

If the contractor affixes symbols of a waste disposal system in terms of Section 6 Clause 3 of the German packaging regulations (VerpackV), e.g. "Der Grüne Punkt" (Green Dot), to the delivery items on behalf of the customer, the customer is regarded as the entity responsible for bringing the symbol into circulation in terms of the packaging regulations and shall thus pay fees directly to the waste disposal system.

2.

If the customer infringes the packaging regulations and if claims are made against the contractor as a result, the customer is obliged to reimburse the contractor all expenses incurred in this regard.

3.

If the packaging constitutes service packaging filled with merchandise in terms of Section 3 Clause 1 No. 2 Part 2 of the packaging regulations which private end consumers typically accumulate and which are put into circulation by the customer for the first time, the regulations listed under Figure 1 above apply accordingly if the customer undertakes to participate in such a system himself.

Should the customer require the contractor in accordance with Section 6 Clause 1 Part 2 of the packaging regulations to participate in one or more systems with regard to the service packaging supplied to the customer by the contractor in accordance with Section 6 Clause 3 of the packaging regulations and issues a corresponding letter of representation for the contractor in accordance with Section 10 Clause 3 of the packaging regulations, the following shall apply:

4.

Obligations in accordance with Section 6 Clause 1 Part 2 of the packaging regulations and also Section 10 Clause 3 of the packaging regulations shall only be assumed by the contractor if the customer requests this of the contractor in writing. In this case, the contractor shall confirm the written request to the customer in writing.

5.

If the contractor assumes participation in a system in accordance with Section 6 Clause 3 of the packaging regulations and the handing over of a letter of representation in accordance with Section 10 Clause 3 of the packaging regulations on behalf of the customer the customer is obliged to reimburse the contractor the costs thus incurred, in particular the full costs including the administrative costs for the utilisation of the waste disposal system in accordance with Section 6 Clause 3 of the packaging regulations (e.g. the Dual System) and also the costs for the handing over of the letter of representation and – if desired – the costs for affixing the symbol of a waste disposal system such as the Green Dot.

6.

Costs for the assumption of the utilisation of a waste disposal system, for the handing over of the letter of representation, the administrative costs, and – if desired – the costs for affixing the symbol of a waste disposal system such as the Green Dot shall be listed separately for the customer on the invoice for each delivery of service packages based on the scale of charges of the waste disposal system used.

7.

The contractor shall freely select the waste disposal system to be used.

8.

For packaging which is not in the territory of the Federal Republic of Germany, but rather in other countries, and thus does not need to be disposed of according to German packaging regulations, § V. section 1 to 7 do not apply. The customer is indeed responsible for disposal of the packaging according to the legal requirements of the country to which the packaging was imported.

VI.

Delivery/ Delivery delay/ Force majeure / Reservation of self-delivery

1.

Insofar as this is not otherwise agreed orally or in writing, the delivery period shall be the delivery deadline specified in writing in the order confirmation. Insofar as the customer has not provided all documents, approvals, releases, etc. to be supplied by the customer at least one month before the delivery deadline set down in writing, the delivery deadline set down in writing shall be extended by one month beginning from the point in time at which the above documents, approvals, releases, etc. have been received in full by the contractor.

2.

The delivery deadline shall be deemed as complied with if the delivery item has left the contractor's works by the expiry of the deadline, or in case of collection by the customer if the contractor has informed the customer of its readiness for despatch.

3.

Notwithstanding contradictory agreements, the customer is obliged in case of on-call delivery agreements to determine delivery schedules covering at least six months in advance and to call for goods in accordance with the determined delivery schedules in good time before the respective delivery deadline. Should the customer not comply with this obligation or not comply as agreed, the contractor is entitled to make the call or organise the scheduling himself, to deliver the goods or to withdraw from the agreement after having set a reasonable deadline. The right to demand compensation due to breach of duty is not excluded by withdrawal.

4.

Compensation claims against the contractor due to delivery delays or due to services not provided are excluded insofar as gross negligence or premeditation on the part of the contractor, his executive staff or vicarious agents is not involved. This limitation of liability does not apply in case of the culpable infringement of significant contractual obligations (cardinal obligations) for which the contractor is accountable.

The amount of compensation for damage is limited to those that are foreseeable and typical for the contract in cases severe violations of contract caused by ordinary negligence.

Compensation due to production downtimes and/or lost earnings is excluded in cases of ordinary negligence.

This limitation of liability applies accordingly for the conduct of the contractor's vicarious agents and subcontractors.

Liability for injury to life, limb and health remains unaffected by the above limitation of liability.

Any right to withdrawal to which the customer may be entitled due to such circumstances remains unaffected by this limitation of liability.

5.

If, after conclusion of the agreement, the contractor is prevented from fulfilling his obligations through the occurrence of unforeseen, unusual circumstances which could not be anticipated despite the exercising of reasonable care appropriate to the circumstances, in particular breakdowns, official sanctions or intervention, delays in the supply of major raw materials, energy supply problems etc., the delivery deadline shall be extended commensurately. Should delivery become impossible due to these circumstances the contractor is freed from his delivery commitment.

This regulation also applies in case of lock-outs and strikes.

Should the contractor demonstrate that despite careful selection of his suppliers and despite conclusion of the necessary agreements on appropriate terms he has not received a delivery from a supplier in good time, the delivery deadline shall be extended by the delay period caused by the non-punctual delivery by the supplier. In the case that delivery by the supplier is impossible the contractor is entitled to withdraw from the contract. The contractor undertakes to cede to the customer any claims against the supplier to which he is entitled due to the unpunctual or non-delivery.

If the above impediments last longer than one month the customer is entitled to withdraw from the contract with regard to the as yet unfulfilled part.

Should the delivery time be extended in the above cases or should the contractor be freed from his obligation to supply, any resulting compensation claims and rights of withdrawal on the part of the contractor with the exception of the right to withdraw expire after one month.

The contractor may only cite the circumstances described here if he has promptly informed the customer of said circumstances.

6.

Termination of the contractual relationship due to delivery delay requires default on the part of the contractor and additionally requires the setting of an appropriate deadline with the threat that the contractual relationship shall not be continued by the customer after the deadline set has expired.

VII. Packaging and despatch

The contractor is obliged to provide the customary packaging. His liability with regard to packaging and despatch is limited to premeditation and gross negligence as far as no injury to life, limb and health is involved. The contractor's right to raise a plea of contributory negligence on the part of the customer remains unaffected.

VIII. Tolerances

1. Weight discrepancies

Discrepancies in grammage shall be tolerated by the customer in the same measure as they shall be tolerated by the contractor in accordance with the delivery terms of the manufacturers of the materials used.

In the absence of contradictory information in the terms of delivery, the following tolerances apply:

a)

Paper in relation to the agreed grammage:

| | |
|------------------------------|---------|
| Up to 39 g/m ² | +/- 8 % |
| 40 - 59 g/m ² | +/- 6 % |
| 60 and more g/m ² | +/- 5 % |

b)

Plastic film in relation to the agreed thickness:

| | |
|--------------------|----------|
| Less than 15 my | +/- 25 % |
| from 15 my - 25 my | +/- 15 % |
| greater than 25 my | +/- 13 % |

c)

Aluminium foil, composite film, cellophane and other materials in relation to the agreed thickness or grammage (depending on which dimension the contract is based on; applies singly or as part of another product):

+/- 10 %

2. Dimensional deviations

The following dimensional deviations shall be tolerated by the customer:

a)

Paper and paper combinations

- Bags:

| | |
|--|----------|
| in length | +/- 4 mm |
| in width for bag widths of less than 80 mm | +/- 3 % |
| in width for bag widths of 80 mm and more | +/- 2 % |

- Rolls:

| | |
|--------------------------------|----------|
| in width and in cut-off length | +/- 3 mm |
| in running length | +/- 3 % |

| | | |
|----|------------------------|----------|
| - | Formats: | |
| | in length | +/- 5 mm |
| | in width | +/- 5 mm |
| b) | | |
| | Plastics and aluminium | +/- 5 % |

c)

Dimensional deviations for the rolls and formats in a) and the materials specified in b) also apply for the provision of printing and also punching out and embossing on these materials. For the bags listed in a) a dimensional deviation of +/- 4 mm applies for the provision of printing and also punching out and embossing breadthwise for bag widths greater than 80 mm and of +/- 3 mm for bag widths of 80 mm and less. Gauge pin deviations cannot be excluded with printed materials for technical reasons, as they depend on the material, the design and the printing process. Only major deviations may be rejected.

3. Quantity variances

The contractor is entitled to make deliveries with an excess or shortfall of up to 20 % of the quantity ordered with all makings and in case of sale by quantity (quantities below 50,000 and with collecting tables with print changes within the run and also in case of sale by weight (for weights below 500 kg)) of up to 30 % of the quantity ordered. Delivery is made with full invoicing of the actual quantities delivered.

IX. Printing

1.

The contractor uses normal print colours for printing. If special demands are made of colours such as high resistance to light, alkali resistance, abrasion resistance, suitability for contact with foodstuffs etc. the customer must make special mention of this at the time of ordering.

No guarantee can be undertaken for the light resistance of the material and print colours since raw material and paint suppliers also give no guarantee for the light resistance of the colours. Equally, no guarantee can be undertaken for the abrasion resistance of the print colours.

The contractor reserves the right to minor deviations in colours insofar as they are customary in the trade. They do not entitle the customer to refuse to accept the goods or to a price reduction. Test prints are submitted before printing at the express request of the customer or if the contractor deems this to be necessary. Since these test prints (e.g. proof, cromalin, offset proof etc.) are not produced with the Flexo-print process, significant deviations from the subsequent production print run cannot be avoided to some extent. On-press proof prints requested by the customer shall be invoiced separately at cost.

2.

The contractor cannot undertake any guarantee for migrations of softeners or similar migration effects with plastic products and for the resulting consequences. Insofar as the contractor is liable in variance with IX. Figure 2 Part 1, Figure XIII of these terms and conditions applies.

3.

The contractor is not responsible for the consequences of errors in the “film masters” or other similar materials supplied to him by the customer for printing the uniform product code or another, similar code; neither is he responsible for difficulties or their consequences which can occur through the use of the imprinted code. “Film masters” supplied by the customer shall be deemed to include proofs of printing work approved by the customer which contain a uniform product code.

4.

The EAN barcode is printed according to the current state of technology and in consideration of the CCG’s relevant rules of application (see also the journal series on co-organisation, booklet 2, The EAN barcode).

Further commitments, in particular statements regarding reading results at retail cash tills, cannot be given due to the customer’s potential influence on the bar codes after delivery and due to the lack of uniform measuring and reading technology.

5.

The contractor is not liable for faults caused by impression plates and printing templates provided by the customer and/or his vicarious agents. Should the contractor discover text or picture errors during production and stop or interrupt production on account of these errors, the customer hereby bears the associated additional costs.

X.

Material and performance

1.

Without special instructions on the part of the customer, orders are performed by the contractor using standard materials and in accordance with established manufacturing processes. If the packaging is used for foodstuffs the suitability of the material for foodstuffs must be expressly clarified with the contractor. Subsequent complaints about defects in the behaviour of the packaging towards the product and vice versa cannot be made if the customer does not expressly mention specific characteristics of the product and/or use for foodstuffs and has not given the contractor the opportunity to comment. These instructions and comments must be made in writing.

2.

Recyclable raw materials are selected with care by the contractor. Regenerated foils and recycled paper still demonstrate variations in surface characteristics, colour, purity, odour, and physical values from batch to batch which do not entitle the customer to make a complaint. The contractor agrees, however, to cede to the customer any guarantee and/or compensation claims towards suppliers due to the quality of the regenerated foils and the recycled papers.

XI. Reservation of title

1.

The goods supplied remain the property of the contractor until the sale price is paid in full.

2.

The customer is entitled to sell on the reserved goods in the normal course of business; pledging or transfer by way of security is, however, only permitted with the approval of the contractor. The customer is obliged to secure the rights of the contractor in case of resale of the reserved goods on credit.

3.

The customer hereby cedes claims of the customer's arising from the resale of the reserved goods to the contractor; the contractor accepts the cession. Regardless of the cession and the contractor's right to seizure, the customer is entitled to seizure as long as he fulfils his obligations towards the contractor and his financial situation does not deteriorate. At the request of the contractor the customer shall supply the information on the ceded claims necessary for seizure, in particular a list of debtors with names and addresses, the amount of the claims and the date of invoicing, and inform the debtors of the cession.

4.

Any processing and treatment of the reserved goods is performed by the customer for the contractor without creating any obligation for the contractor. In the case of processing, combination or mixing of the reserved goods with other goods not belonging to the contractor the contractor is entitled to a co-ownership share of the new item which is created proportional to the invoice value of the reserved goods in relation to the remaining processed goods at the time of processing, combination or mixing.

If the contractor acquires sole ownership of the new item, the contracting parties agree that the customer shall grant the contractor co-ownership of the new item proportional to the invoice value of the processed, combined or mixed reserved goods and shall keep this co-ownership share for the contractor free of charge.

5.

If the reserved goods are resold immediately together with other goods either without or following processing, combination or mixing the cession in advance agreed above shall apply only to the amount of the invoice value of the reserved goods which are resold together with the other goods.

6.

The customer shall immediately inform the contractor about foreclosure measures by third parties on the reserved goods or claims ceded in advance and shall hand over the documentation necessary for intervention.

7.

The authorisation of the contractor to dispose of the reserved goods and to collect the ceded claim lapses in case of arrears on the part of the customer, in case of bill or cheque protests and financial collapse – in particular in case of application for a composition or for insolvency by the customer. In these cases the contractor is in particular entitled to take possession of the reserved goods and the customer is obliged to hand over the reserved goods to the contractor. Redemption constitutes withdrawal from the contract only if this is expressly stated.

8.

It is hereby clarified that in cases of cheque financing the title to the delivery items only passes to the customer following complete redemption of the draft and payment of the amount of the draft to the contractor.

9.

If the customer falls into arrears with his payments to the contractor twice within six months and/or if the customer is insolvent and/or his insolvency becomes apparent on the basis of objective criteria the contractor is entitled to demand the return of the delivery item and, in case of resale, to collect claims ceded to the contractor directly from the customer's buyer.

The contractor is entitled to assert the handing over of the delivery items by the customer without being obliged to declare his withdrawal from the agreement.

10.

The contractor undertakes to release the securities he is entitled to under the above provisions insofar as their value exceeds the claim by 10 % or more. Which securities the contractor releases shall be decided by the contractor at his sole discretion.

XII. Notice of defects/Defects

1.

The customer's obligations to inspect and report defects are defined in Section 377 of the German Commercial Code (HGB).

2.

In case of larger deliveries of similar goods the entire batch delivered can only be rejected as defective if the defects have been detected by means of a recognised representative sampling process.

3.

If the entire quantity of flexible packaging delivered demonstrates defects in up to 3 % of the overall quantity the entire quantity cannot be rejected as defective, nor can defects be asserted on account of this maximum of 3 % defective flexible packaging. It is irrelevant whether the defect lies in processing or in the printing.

4.

The contractor shall be given the opportunity to ascertain reported defects in situ.

XIII. Material defects/Limitation periods

1.

If the delivery item is not free of material defects or if the contractor has undertaken a guarantee for certain quality features, he shall rectify the defect or supply a defect-free item at his discretion.

2.

If the rectification fails after an unsuccessful second attempt the customer may withdraw from the agreement or reduce the sale price at his discretion.

If the material defect can be ascribed to gross negligence or premeditation on the part of the contractor, his assistants or vicarious agents, or if the defect leads to a culpable infringement of significant contractual obligations (cardinal obligations) or to culpable injury to life, limb or health, or if the contractor has undertaken a guarantee for certain quality features, or if the Product Liability Act applies the customer can also make a claim for compensation on account of the material defect instead of withdrawing from the contract or reducing the sale price.

The amount of compensation for damage is limited to those that are foreseeable and typical for the contract in cases severe violations of contract caused by ordinary negligence.

Compensation due to production downtimes and/or lost earnings is excluded in cases of ordinary negligence.

This limitation of liability applies accordingly for the contractors' assistants and vicarious agents.

The above limitation / exclusion of liability also applies in particular for losses which can be attributed to the fact that the abrasion resistance, lightfastness, alkali resistance, friction resistance and water resistance of the colours used is insufficient, the alignment of the coding and numbering is incorrect, the coding template provided by the customer is illegible when transferred to the delivery items to be manufactured, it is impossible to make the coding legible when flexible materials are used, the packaged goods are impaired by the delivery item or the delivery item does not comply with the statutory regulations to be fulfilled for the product.

This limitation / exclusion of liability also apply to damage based on print documents (designs, films, impression plates etc.).

The application of the Product Liability Act remains unaffected by this limitation of liability.

3.

If the contractor decides to rectify the fault he shall bear the costs necessary for rectification. Costs which are incurred because the delivery item has been moved to a location other than the customer's domicile or the contractually agreed delivery location are borne by the customer.

4.

No guarantee claims on the part of the customer are recognised insofar as the contractor is not liable in accordance with VIII., IX., X. and XII.

If the customer has made a claim against the contractor due to material defects and it transpires that either there is no defect or the claimed defect is due to circumstances for which the contractor is not liable, the customer shall reimburse the contractor for all costs thus incurred.

5.

The regular limitation period for defective delivery items which are not normally used in construction is one year as from delivery of the delivery item to the customer.

Insofar as the contractor can be made liable for compensation, the shortening of the limitation period by the contractor for compensation claims in case of material defects due to gross negligence or premeditation, the culpable infringement of major contractual obligations (cardinal obligations) and also culpable injury to life, limb and health and in the case of a guarantee of quality granted by the contractor is excluded.

If the contractor has expressly granted a guarantee of quality, claims arising from this guarantee of quality expire within two years beginning with the delivery of the delivery items for which the guarantee of quality has been undertaken. If the contractor has granted a durability guarantee, claims arising from said durability guarantee expire with the expiry of the period for which the durability guarantee was granted. This period also begins with the delivery of the delivery item for which the durability guarantee was granted.

If the durability guarantee is for less than one year the expiry deadline is determined according to XIII. Figure 5 of these general terms and conditions of business.

6.

Customer claims in case of defects due to an insignificant reduction of the value or the serviceability of the delivery item are not permissible. The limitation of liability does not apply in case of compensation claims due to material defects which can be attributed to gross negligence and premeditation or which lead to injury to life, limb and health.

7.

All material defect claims are excluded if the delivery items are second-hand items. This exclusion does not apply to compensation claims in case of gross negligence or premeditation, culpable infringement of major contractual obligations (cardinal obligations) or culpable injury to life, limb or health by the contractor, his executive staff or vicarious agents.

XIV.

Miscellaneous compensation claims

1.

The contractor's liability due to material or legal defects or delivery delays or non-delivery is not covered by this section (Section XIV). The provisions of Sections VI., VIII., X., XV. of these general conditions of sale, delivery and payment apply for this liability.

2.

Compensation claims against the contractor due to miscellaneous breaches of duty by the contractor, in particular duty of care and/or due to obligations similar to a legal transaction are excluded if not caused by gross negligence or premeditation and/or culpable infringement of major contractual obligations (cardinal obligations) and/or injury to life, limb or health by the contractor or his assistants or vicarious agents.

The amount of compensation for damage is limited to those that are foreseeable and typical for the contract in cases severe violations of contract caused by ordinary negligence.

Liability due to production downtimes and/or lost earnings is excluded in case of ordinary negligence.

The aforementioned limitation of liability also applies accordingly to the behaviour of the supplier's subcontractors and vicarious agents.

3.

This limitation of liability in accordance with paragraph (2) applies correspondingly to wrongful claims. Liability in accordance with the Product Liability Act remains unaffected by this provision.

4.

Compensation claims arising from miscellaneous breaches of duty provided for in this section which are not based on a material defect expire within one year following the conclusion of the year in which the claim has arisen and the contractor has been made aware of the circumstances upon which the claim is based or must have become aware of said circumstances in the absence of gross negligence. The maximum periods provided for in Section 199 Clauses 2 and 3 of the German Civil Code (BGB) continue to apply.

This limitation of expiry deadlines does not apply to compensation claims due to gross negligence or premeditation, in case of culpable infringement of major contractual obligations (cardinal obligations), injury to life, limb and health and liberty and also infringement of the Product Liability Act by the contractor or his assistants or vicarious agents.

XV. Industrial property rights

1.

Compensation claims against the contractor, his assistants or vicarious agents arising from the infringement of trade marks, patents, patent applications, utility and design patents and copyrights are excluded insofar as they are not due to gross negligence or premeditation on the part of the contractor, his assistants or vicarious agents or insofar as the non-infringement of the above industrial property rights was guaranteed by the contractor.

This limitation of liability does not apply in case of the culpable infringement of major contractual obligations (cardinal obligations) by the contractor, his assistants or vicarious agents.

The amount of compensation for damage is limited to those that are foreseeable and typical for the contract in cases severe violations of contract caused by ordinary negligence.

Liability due to ordinary negligence does not include liability due to production downtimes and lost earnings.

This limitation of liability applies correspondingly for the conduct of the contractor's vicarious agents and subcontractors.

2.

The customer's right to withdraw due to the infringement of the above industrial property rights remains unaffected.

3.

Insofar as the contractor can be held liable for the infringement of the industrial property rights of third parties the customer has only proven said defective title if a legally valid judgement has been made against him in this regard. The right of the customer to inform the contractor of the dispute remains unaffected by this provision.

XVI.

Suspension of expiry in case of negotiations

Negotiations regarding claims due to material defects or other compensation claims are only deemed to be ongoing if the parties have declared that they will negotiate about such claims.

XVII.

Conditions of payment

1.

Payments are due by the agreed payment deadline. If no date-related deadline has been determined, payments are due on receipt of the invoice or a corresponding payment plan. Insofar as the receipt of the invoice or the payment plan is uncertain, payments are due on receipt of the contractor's goods and services.

If the customer pays within one week calculated from the invoice date he is entitled to a discount to the value of 2 % of the net invoice amount.

2.

In case of outstanding contractor's invoices, payments made cover the respective oldest claim due insofar as this claim is not a claim against which the customer has asserted a right of retention.

3.

If the customer is in payment arrears from previous deliveries by the contractor and/or the customer suffers a significant deterioration in his financial situation subsequent to conclusion of the contract which endangers the contractor's claim for reciprocation, the payment must be made matching payment with delivery of the delivery items. The customer can avert the matching of payment with delivery by providing security to the amount of the sale price with regard to the relevant delivery.

4.

The customer is not entitled to offset the contractor's claims as long as these claims have not been deemed to be undisputed or legally binding.

XVIII.

Place of fulfilment/ Place of jurisdiction/ Applicable law

1.

Notwithstanding contradictory arrangements, the place of fulfilment for deliveries, services and payment is the contractor's domicile.

2.

The exclusive place of jurisdiction for all disputes arising from the contractual relationship existing between the parties upon which these goods and services are based is the contractor's domicile. The contractor is, however, entitled – but not obliged – to sue the customer at the customer's domicile.

3.

German law applies to the legal relationship between the parties with regard to the agreed goods and services with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

4.

Supplementary agreements, reservations, alterations and amendments shall be made in writing.

5.

Should a provision of these general conditions of business, delivery and payment or a provision as part of other agreements with regard to the delivery contract be or become ineffective this shall not affect the effectiveness of all other provisions or agreements.