

GENERAL TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION

Conclusion of contracts, general

1. These General Terms and Conditions for Delivery and Installation shall apply to all – even future – deliveries and services. Opposing conditions imposed by customers are hereby rejected explicitly. They shall not put any obligation on us even if we have not opposed them again explicitly after receipt.
2. Our offers shall be considered to be non-binding. Conclusions of a contract and all other agreements, including all oral side agreements and undertakings of employees or agents shall be confirmed in writing by us to become binding.
3. Drawings, pictures, technical data, weight-, measure- and service specification shall be regarded as approximate, unless the order confirmation explicitly mentioned them as binding. We retain ownership and all copyrights to such documents; they shall not be made available to third parties without our prior written consent.
4. Unless agreed otherwise, for abbreviations customary in trade (e.g. fob, cif, c.u.f.) the "INCOTERMS" fixed by the International Chamber of Commerce shall apply in its most up to date version.

Prices, payments and set-off

5. Unless otherwise agreed, all prices are ex works or ex warehouse including loading. All other costs such as packing, freight, custom duties, insurances etc. and VAT shall be invoiced additionally.
6. Unless otherwise agreed in writing, the agreed price shall be paid within 10 days deducting a cash discount of 2% or within 30 days after invoice date net. If payment is made by bill of exchange or as an upfront payment, neither cash discounts nor interest reimbursements shall be granted. In derogation of § 284 subsec. 3 BGB (German Civil Code), the customer shall be in delay by a reminder or expiry of the agreed payment time (§ 284 subsec. 2 BGB).
7. In case of excess of the time limit as well as in cases of delay as specified in § 284 subsec. 1, 2 and 3 BGB, we are entitled to claim interest in line with the bank interest applicable at such date, however, at least interests 5% above the basic interest rate of the European Central Bank at such time. It shall be increased or reduced, if we can give evidence of expenses based on a higher interest rate or if customer can give evidence of lower expenses. The assertion of further damages based on delay remains reserved. § 353 BGB shall remain unaffected.
8. In case after the conclusion of a contract the financial conditions of the customer become worse substantially in a manner endangering the consideration, we are entitled to withhold our delivery or service in case we are obliged to perform in advance, until the consideration has been forwarded or security has been given to us. In case customer is neither willing to complete concurrently nor to provide security after having received an according demand, we shall be entitled to withdraw from this contract.
9. Customer shall only be entitled to a right of retention to the extent such right is based on the same contractual relation accordingly.
10. The set-off against counterclaims of customer shall only be permitted to the extent such claims are accepted as existing and due by us or such claims have become res judicata.

Dates and periods for delivery

11. Delivery dates and periods shall only be approximately unless we have confirmed them in writing and have explicitly marked them as binding. The delivery period shall begin at the date of our order confirmation, not, however, prior to the verification of all technical and business details and the presentation of the according permission, if any. In case customer requests modifications of the subject of the order, the delivery period shall be extended accordingly.
12. Partial delivery and partial performance are permitted.
13. In case of unforeseeable events, we are entitled to postpone the delivery in accordance with the hindrance and an appropriate start-up period. All events that could not be avoided applying reasonable diligence shall be regarded as unforeseeable, e.g. war, currency and trade policy and other governmental acts, civil disorders, natural occurrences, fire, strike, lockout, non-supply of raw or pre-products unless based on our negligence, interruption of operations or traffic and all other cases of force majeure, which endanger the completion of the contract, complicate it substantially or make it impossible. In such case, we are entitled to withdraw from this contract without any obligation to pay damages. The customer shall be entitled to claim a statement from us specifying whether we intend to withdraw or will perform within an appropriate period of time. In case we provide no such statement, customer shall be entitled to withdraw from this contract. Partial deliveries and partial services shall not be rejected by customer.
14. In case of delays in delivery based on other reasons, customer shall grant an additional period of time of reasonable length. In case even during such additional period of time we have not dispatched the item ordered respectively have not provided the service agreed, customer shall be entitled to withdraw from the contract with respect to all items that have not been dispatched, notified as ready for dispatch or performed until the end of such extended period. In case the partial performances already provided by us are of no use to customer, he is entitled to withdraw from the entire contract. In case customer suffers damage because of delays based on our negligence, we will compensate the damage of which evidence can be given, limited, however, to a maximum amount of 1/2% of the purchase price per week of further delay in delivery, in total not more than 5% of the respective price. The aforementioned limits shall not apply in cases of intention or misconduct or gross negligence. Customer's right to withdraw after an appropriate period of time has elapsed without success shall remain unaffected.

Dispatch, packing and passing of risk

15. The dispatch of goods shall be at customer's costs and risk. At the time the goods are handed-over to a carrier or forwarder, latest at the time such goods leave our warehouse or plant, the risk shall pass to customer; this shall also apply in cases "free delivered" is agreed. In case the dispatch is delayed by customer's behaviour, the risk shall only pass to customer at the time the readiness for dispatch is notified.
16. Goods notified as ready for dispatch shall be called immediately. Otherwise, we are entitled to dispatch such goods at our discretion or to store it at customer's expenses and risk and to invoice it.
17. We will only obtain transport insurance in cases of a separate written agreement with customer and at customer's expenses.
18. Unless otherwise agreed, packing, way and mean of transport shall be at our sole discretion.

Retention of title

19. The items delivered shall remain our property (reserved goods) until all our claims are settled; such property shall not be affected by payments being specifically identified to settle a particular claim. Regarding continuous accounts, the reserved title shall secure our balance of account. In case we agree with our customers on the cheque-bill of exchange procedure, our retention of title shall remain in force until we are legally not liable for any claims based on the bill of exchange. The same shall apply in case of any contingent liability which we assume for customer.
20. In cases of processing or working-up of the goods, we have reserved title to shall be made for us as the manufacturer as specified in § 950 BGB without imposing any obligation on us. In cases of processing by customer together with other products not belonging to us, we shall be joint proprietor of the manufactured item reflecting the invoice values of the goods under our retention of title compared with the other items utilised in such manufacture.
21. In case the goods supplied by us are mixed or combined with other items extinguishing our property to the supplied goods (§§ 947, 948 BGB), it is agreed that the property to the mixed stocks or the new item in accordance with the invoice value of the goods and our retention of title shall be forwarded to us and that the customer shall store such items for us free of charge.
22. All items that are the result of such manufacture, combination or mixing shall be regarded as goods under our retention of title for the purposes of these conditions.

23. Customer shall process or sell goods under our retention of title only in the ordinary course of business at ordinary terms of business and to the extent he is not in delay. He is entitled to resell such goods only in case the claims under such resale including all side claims are transferred to us in line with the following provisions. He is not entitled to any other dispositions. All other cases of utilising the goods under our retention of title for completing other contracts for works and services shall be regarded as cases of resale of the goods under our retention of title.
24. Customer's claims based on the resale of products under our retention of title including all side claims are herewith assigned to us. Such claims shall secure our claims to the same extent as the goods under our retention of title did. In case the goods under our retention of title are sold by customer together with other items not belonging to us, the assignment of claims shall only be made to the amount of our invoice. In case the goods under our retention of title are sold by customer after being processed or mixed or manufactured with other items not belonging to us, the assignment shall be limited to the value of our joint property participation at the items sold or the respective stock.
25. Unless customer is in delay, he is entitled to collect the claims generated from the resale until our revocation, which shall be possible at anytime. At our request, which shall be permitted anytime, he shall be obliged to notify the assignment to his buyer immediately and to forward all information necessary to collect such funds to us.
26. Customer shall notify any attachment of property or any other interference without any undue delay.
27. In case the customer is delayed in payments, we can request surrender of possession with respect to the goods under our retention of title without customer being entitled to any rights of retention. Any assertion of our retention of title shall only be regarded as a withdrawal from the contract if we state such withdrawal explicitly. To safeguard our surrender of possession, we are entitled to enter customer's premises and to remove the goods under our retention of title for taking into custody.
28. In case the value of the security exceeds our claims not just temporarily by at least 20%, we are, at customer's request, prepared to release security at our discretion.

Compliance in respect of a defective good and warranty

29. Customer shall inspect the goods delivered immediately after receipt applying all reasonable diligence. In case of obvious defects or defects discovered during such examination as well as in cases of complaints about incomplete delivery a written or teletyped notice has to be received by us within 2 weeks after receipt; all other defects have to be notified without undue delay after discovery.
30. We shall not be obliged to any warranty in cases of
 - non-obeyance of the handling advices, which are either enclosed as delivery or can be obtained from us or our respective place of business,
 - in case of improper layout, load or handling,
 - in cases of inadequate maintenance by customer or third parties,
 - used goods.
31. In cases of justified, immediate notification of defects, the warranty shall be made, at our discretion, by rectification of defects or replacement. Alternatively, we shall also be entitled to take back the good against reimbursement of the purchase price.
32. All other or further claims for warranty are excluded. In particular, this applies to all damages not occurring at the good itself (consequential damages). In cases of absence of guarantee qualities we shall only be liable to the extent the guarantee of a quality was intended to protect customer against damages of the kind that occurred.
33. In case we do not comply with our rectification or replacement obligations or do not comply with such obligations in a contractual manner, customer shall be entitled to claim, at his discretion, reduction of price or rescission for breach of warranty.
34. All claims for warranty shall be time-barred 12 months after delivery.
35. Capacitance sensing performed by us during the warranty period at customer's request and expenses can be obtained in accordance with DIN 57510/VDE 0.510 ???

Installation and reinstallation of accumulators

36. Unless otherwise agreed in writing at the time the contract is concluded, in case we are appointed to fill, commission or install (with or without attaching connecting leads) of batteries in relation with supply agreements or otherwise, the following conditions shall apply.
37. The remuneration shall be in line with the flat rate or hourly rate. In case no agreement has been made, our up to date listed flat rates shall apply.
38. In case the installation, reinstallation or commissioning is delayed without our negligence, customer shall reimburse the costs for waiting time and necessary additional travel expenses of our personnel.
39. Customer shall inform us prior to the start of our activities about the local circumstances in detail and inform us about particularities. The agreed remuneration is based on an unhindered access to the place of service.
40. In cases of reinstallation of accumulators, customer shall dispose of all waste (assets, lies, battery material etc.) in accordance with the applicable legal provisions in force at its own expenses.

Limitation of liability and time limitation

41. Our liability is solely governed by these General Terms and Conditions of Delivery and Installation. All claims that are not explicitly accepted in these Conditions, in particular claims for damages based on impossibility of performance, delay, breach of contractual accessory obligations (including advice and information), negligence during the contractual negotiations, tort – also if connected with the warranty claims of customer – shall be excluded unless they are based on intentional or gross negligent misconduct by us, a legal representative or a vicarious agent or in case they are based on a breach substantial obligations or obligations essential for the contract by us, a legal representative or a managing vicarious agent because of slight negligence.
42. All claims against us, based on whatever reason, shall be time-barred after one year unless a shorter limitation period is provided for by law or these Conditions.
43. These provisions shall not affect claims for personal injuries or damages at items used privately in accordance with the product liability act.

Place of performance, jurisdiction and applicable law

44. Place of performance for all deliveries is the place of the respective plant or warehouse. For all other obligations, Brilon shall be place of performance.
45. In case customer is a merchant who has been entered into the Commercial Register as a merchant or public law entity, the place of jurisdiction, which shall also be applicable for bill of exchange and cheque litigation, is our place of business. The same place of jurisdiction shall apply, if customer does not have a general place of jurisdiction domestically, moves its domicile or habitual residence domestically after the contract has been made or in case his domicile or habitual residence is unknown at the time a law suit is filed. We shall also be entitled to sue customer at his place of business.
46. For all legal relations between us and customer, the laws of the Federal Republic of Germany as applicable between German domestic parties shall apply.

Personal data

47. We store personal data of customers by the mean of electronic data processing.