

Terms and conditions of delivery and payment

I. Scope of application

1. The terms and conditions which follow shall apply exclusively to all our deliveries, including those arising from future transactions. We shall not be bound by possible purchasing conditions or other general terms and conditions of business, even if we do not expressly gainsay these.
2. The possible inefficacy of individual terms and conditions within this document shall not affect the validity of the remaining conditions.

II. Contractual conclusion

1. Our acceptance of an order shall only prove binding in the event that we receive a written order confirmation.
2. Order acceptance by agents or other representatives shall only prove binding for us in the event that we confirm the order in writing or issue the latter with a written power of attorney for the purposes of the contract's conclusion.
3. We shall be entitled to accept orders in a partial manner.

III. Offers

1. Our offers are always non-binding and subject to change without notice, unless an express agreement to the contrary has been made.
2. Under no circumstances shall we be obliged to execute subsequent deliveries in accordance with previous conditions.

IV. Contractual contents, written form

1. All contractual agreements must be made in writing in order to become legally effective. This shall apply particularly in the event that these amend or supplement the present terms and conditions of delivery.
2. Weights and measures shall be valid within the framework of the approximate margins customary within the industry, while circuit diagrams shall not prove decisive in terms of power supply. We reserve the right to alter the information on our data specification sheets, this with particular reference to technical information.

V. Prototypes and tools

1. Tools and models etc. which prove necessary to the order's execution shall remain in our possession, even if these have been manufactured in accordance with the specifications of the ordering party and if the resultant manufacturing costs have been reimbursed in whole or in part, this unless other specific arrangements have been made.
2. The costs of the said tools and models must be reimbursed, this strictly net and free of costs, after the contract's conclusion.

VI. Prices and payment

1. The prices are valid ex works from the delivering party's premises, plus value added tax, or from the delivering party's warehouse plus current prior carrier charges and value added tax on a pro-rata basis, and shall exclude packaging, assembly and commissioning.
2. Charges shall be calculated on the basis of the prices valid on the day of delivery.
3. Our invoices shall be payable within 30 days of the invoice date due net. All payments must be made free of costs. Cheques and discountable bills of exchange shall only be accepted on account of payment or in the wake of special agreements. Credit notes on cheques and bills of exchange shall only be issued upon receipt of the net proceeds.
4. All outstanding payments shall be due immediately in the event that the ordering party fails to adhere to the terms and conditions of payment, or we are made aware of other circumstances (bill or cheque protests, legal enforcement measures, suspension of payment, settlement or bankruptcy petition), which compromise the creditworthiness of the ordering party from the perspective of a prudent businessman. We may demand cash payment, advance payment or payment bond, this as we deem appropriate. In the event that the ordering party fails to meet these demands, we shall not be obliged to make any further deliveries, and may withdraw from the contract or demand compensation on the grounds of non-fulfilment. In the latter case, the claim for damages shall, at all events, amount to 20% of the contractual amount, unless the ordering party proves that no damage or considerably less damage has occurred. This shall, however, in no way exclude claims on the grounds of more extensive damages.
5. The ordering party may not offset compensation payments, nor exercise any rights of retention, on the basis of a disputed counter claim which has not been legally asserted.
6. Payments shall always constitute the settlement of the oldest invoice.

VII. Default

1. The ordering party shall be deemed to be in default of payment in the event that invoices have not been paid within 30 days of invoice receipt and 40 days at the latest after the delivery has been made. In this case, we may demand default interest and damages caused by the said delay as applicable. In the event that the ordering party is in default of payment, we shall be entitled to charge default interest of 8% above the current published base lending rate. We shall also be entitled to establish a claim for more advanced damages in individual cases. In the case of a default in payment, we may demand the reimbursement of representative damages amounting to up to 20% of the gross price without the provision of additional proof, unless the ordering party is able to prove that no or lesser damages have occurred.

VIII. Terms and conditions of delivery

1. Delivery shall be made at the risk and expense of the ordering party, this ex works from the delivering party's premises or warehouse, excluding packaging and plus pro-rata prior carrier charges in the event of ex warehouse delivery. Packaging shall usually be charged to account. The ordering party shall also bear the risk of delivery in the event that we assemble the goods in question.
2. Agreements relating to delivery dates and periods shall always be deemed approximate.
3. The ordering party shall be entitled to withdraw from the contract on the grounds of late delivery or demand damages in the event that delivery is delayed and a reasonable period of grace specified by the ordering party with threat of refusal has expired fruitlessly.
4. The ordering party shall be obliged to inform us of his intentions in the wake of a delay in delivery within an appropriate time limit, namely whether he intends to withdraw from the contract and / or make a damage claim in place of the service provided or insist on delivery.
5. Damage claims on the grounds of positive breaches of contract, negligence at the time of the contract's conclusion and unauthorised actions shall be excluded, provided that these are not the result of gross negligence on our part or due to acts of gross negligence by our vicarious agents.
6. In the event that the instance of non-fulfilment of our obligations, or a serious delay, is due to unforeseeable or exceptional circumstances, which proved unavoidable despite all reasonable care, such as rioting, strikes, lockout, shortage of raw materials, breakdowns, lack of power or official requirements, the delivery term or delivery date shall be extended as appropriate. We shall be released from our delivery obligation in the event that delivery is entirely obstructed as a result of the above. We shall be entitled to proceed with delivery and demand that the ordering party accept the said delivery in the wake of the obstacle's removal. The ordering party shall not be entitled to assert any damage claims.
7. We have been complying with the current packaging regulations since 01.12.1991, and use recyclable packaging with the "RESY" eco-label. The ordering party shall be obliged to commission a local waste disposal organisation to dispose of transport packaging in accordance with prevailing packaging regulations. We will only accept return deliveries of transport packaging in the event that the said delivery is exempt from charges or carriage paid. We shall not reimburse clients for returned transport packaging.

IX. Specific delivery forms

1. In the case of on-call orders, the ordering party shall be strictly obliged to take delivery of the goods in question within a period of 6 months from the order's placement. Other agreements shall only be valid in the wake of our express confirmation.

X. Industrial property rights, patent rights, right of recourse

1. We are not obliged to check whether we are in breach of industrial property rights or patent rights in the case of orders issued to us. The ordering party shall be responsible for ensuring that these rights are not infringed, resulting in possible damage claims.

XI. Liability for defects

1. The ordering party shall be obliged to inspect the goods received for possible defects and guaranteed quality immediately. The ordering party shall be obliged to inform us of all obvious delivery-related defects immediately and within seven days at the latest after goods receipt, while latent defects should be drawn to our attention in writing within seven days of their discovery. The delivery shall be deemed to have been approved in all other cases.
2. The ordering party shall be obliged to allow us to verify the complaint, this with particular reference to damaged goods and their packaging, which must be placed at our disposal for inspection purposes. We shall be exempted from all defect-related liability in the event that he refuses to do so. Should this be necessary, in cases of threats to operational safety or in order to prevent disproportionate damage, the ordering party shall be entitled to remedy the defect independently or with third party assistance, and to demand reimbursement of the costs thereby incurred from us. The same thing shall apply in the event that we have been prevented from eliminating the defect, this on whatever grounds. At all events, the ordering party shall be obliged to inform us of any repair work carried out.
3. In the event that the ordering party demands supplementary performance in the wake of a defect, we may choose whether to remedy the defect in question ourselves or to deliver defect-free replacements. Replaced goods must be returned to us. In the event that a rectification of defects or replacement delivery proves impossible, is refused, fails or fails to take place for other reasons for which we are responsible within a reasonable time limit imposed by the ordering party, the latter may either withdraw from the contract or request a reduction in the purchase price as he sees fit.

4. The ordering party shall be liable for the payment of costs incurred within the context of unjustified defect-related claims.
5. We shall not be held liable for damages or goods-related defects caused by incorrect operation, careless servicing or maintenance procedures, natural wear and tear, repair and maintenance carried out by third-party suppliers and similar concerns not authorised by us, provided that these damages are not caused by any negligence on our part.
6. Any additional claims by the ordering party, particularly those concerning damages instead of performance and replacing any other direct or indirect damages, including ancillary or consequential damage, irrespective of their legal basis, shall be excluded. This shall not apply in the event that a) we have concealed a defective title or material defect in a fraudulent manner, or have issued a guarantee of the goods' quality, b) the damages were deliberate or the result of gross negligence on our part, on the part of our legal representatives or vicarious agents or due to a negligent breach of fundamental contractual obligations by the aforementioned individuals, or c) a breach of duty for which we, our legal representatives or vicarious agents are deemed culpable has resulted in bodily or health-related injuries. In the event of simple negligence, our obligation to indemnify shall be limited to foreseeable damages related to this contract on a proportionate basis.
7. The terms and conditions in accordance with para. 6 shall apply to direct claims made against our legal representatives or vicarious agents by the ordering party.
8. All defect-related claims made by the ordering party, including the damage claims regulated in paras. 6 and 7 of these Terms and Conditions of Delivery and Payment, shall expire within one calendar year of delivery of the goods in question to the ordering party. The period of limitation for replacements and defect-related rectifications shall be set at twelve calendar months. However, this shall equal the period of limitation stipulated for delivery item and shall continue until it expires. The limit for defect-related liability for the delivery item shall be extended by the duration of the service interruption caused by the rectification of the said defects. This regulation shall not apply in the event that the law in accordance with §§ 438, para. 1, no. 2 (construction works and construction work materials), 479, para. 1 (right of recourse) and 634 a, para. 1, no. 2 (constructional defects) of the German Civil Code (BGB) stipulate longer time limits.
9. The ordering party shall be entitled to withdraw from the contract or seek a reduction in the event that we allow a reasonable time limit to expire fruitlessly without having delivered a replacement or rectifying the defect in question. Any additional damage claims, particularly those related to other goods, shall be excluded, even if the damage in question was caused by the delivery item.

XII. Reservation of ownership

1. The delivered goods shall remain our property until all payments resulting from business connections have been paid. This shall also apply in the event that the delivery item is adequately labelled as such upon payment, as well as in the case of balancing and balance authentication.
2. In the case of processing, combination, amalgamation or commingling of the retained item with other items, we shall be entitled to a co-ownership share in the resultant product in relation to the invoice value of the goods delivered by us in proportion to the invoice value of the remaining goods.
3. The ordering party shall be entitled to sell on the retained goods during the usual course of business. In the event of the continued assignment of the goods in question, the ordering party shall transfer all claims against the purchasing party to us at this point. We shall accept the said assignment.
4. In the event of a default in payment, the ordering party shall be obliged to release the retained goods without our withdrawal from the contract. In this case, the ordering party shall permit us to collect the retained goods immediately and to enter his business and storage premises unhindered for this purpose. The enforcement of the reservation of ownership and the seizure of the retained goods on our part shall not be deemed a form of contractual withdrawal. We shall be entitled to the goods' freehand utilisation or sale in the wake of their redemption. The sale proceeds shall be credited against the ordering party's liabilities to us, this less reasonable implementation costs.
5. We undertake to release the securities to which we are entitled in accordance with paras. 1-3 to the extent that their liquidable value exceeds the payments to be secured by 20 per cent, this at the request of the ordering party.

XIII. Place of performance and place of jurisdiction

1. The place of performance for deliveries shall be the delivering party's premises or warehouse, and the place of performance for payments shall be Horb.
2. The place of jurisdiction shall be Freudenstadt, as exclusively agreed. In the case of deliveries abroad, the parties shall agree on the validity of German Federal law, this with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11.04.1980.

XIV. Additions and amendments

1. The "General conditions for the supply of products and services of electrical and electronics industry" (ZVEI - Zentralverband Elektrotechnik und Industrie - German electrical and electronic manufacturers' association) and the supplementary clause entitled: "extended reservation of ownership" ("erweiterter Eigentumsvorbehalt") shall also apply. These can be viewed on our website (www.georgii-kobold.de) or will be sent to customers on request.