

Conditions of sale, delivery and payment

§ 1 General, contractual basis

(1) These contractual conditions form the basis of all offers, agreements, deliveries and services. This also applies for services or construction work, insofar as the German Construction Contract Procedures Part B (VOB/B) has not been effectively agreed on for such services, and compulsory clauses of the labour and transportation contracts law of the German Civil Code do not take preference.

(2) For all construction work, including assembly work, the German Construction Contract Procedures Part B DIN 1961 apply as amended at the time of contractual conclusion, insofar as the contract is awarded by a contractual partner working in the construction industry.

(3) When construction work contracts are awarded by a customer, the German Construction Contract Procedures Part B (VOB/B) DIN 1961 becomes part of the contract by advising the customer of this by handing over the VOB/B text prior to contractual conclusion. The handover is confirmed by the customer in writing.

For customers, the individual clauses of VOB/B are subject to content inspections according to the regulations in the general terms and conditions of the German Civil Code (BGB), § 305 ff. BGB.

(4) Purchaser contractual conditions differing from these are not valid.

(5) All legal relationships with business owners who are subject to these Terms and Conditions apply to the German law excluding the UN sales law.

§ 2 Offers and prices

(1) Until acceptance of the contract, all offers are subject to change, unless the offer contains a set deadline for submitting quotations. If the client's contract differs from the contractor's offer/quotation, a contract can, in this case, only eventuate if confirmed by the contractor.

(2) If modified services or additional services extending beyond the agreed services are contracted, the bases of the concluded contract are definitive. In the event of cost increases due to wage increases (wage agreements, etc.) or material price increases, the contractor reserves the right to make price adjustments. In the event of supplementary quotations, reference is made to this price development.

(3) If, while processing the orders, the quantities of delivered materials or services change, the excess or under-consumption is settled with the client.

(4) Quotations, diagrams and other documents provided by the contractor must be treated confidentially. The contractor reserves the copyright for copyright-related services,

(5) Repair services are charged on expenses (hourly wage, material costs). Travelling time is considered working hours, and is charged according to the hourly rates. Travel costs are charged on a case-by-case basis.

§ 3 Official and other approvals

The client is responsible for obtaining any necessary official or other approvals, insofar as the contractor has not been contracted to do so (planning contract).

§ 4 Warranty claims

(1) For services which are not considered construction work, liability for defects is governed by §§ 633 ff. BGB, unless the purchasing convention in § 651 BGB is applied.

(2) Warranties for construction services are governed by § 13 VOB/B. For a construction contract with a customer, the liability for defects is determined according to §§ 633 ff. BGB, if VOB/B has not been effectively incorporated into the contractual relationship.

(3) The clauses of §§ 437 ff. BGB apply for the sales agreement, whereby the assertion of a damage compensation claim according to §§ 440, 280, 281, 283, 311 a and § 284 BGB is excluded, insofar as a defect or damage is not due to negligence or deliberate acts by the contractor.

When purchasing used items, any warranty claim is excluded in legal transactions between merchants, insofar as the seller has not maliciously concealed the defect or assumed a guarantee for the quality of the item. A one-year warranty period applies from the time of delivery for a sales agreement concluded with a customer for used items.

(4) Visible defects must be reported in writing after delivery of the item or acceptance of the service. For business dealings (§ 377 German Commercial Code (HGB)), this must be done immediately, and for legal transactions with customers, within two weeks. After expiry of this deadline, warranty claims cannot be asserted for visible defects or other defects.

§ 5 Remuneration, advance payments

(1) If the contractual service is rendered and delivered/accepted by the contractor, payment is due immediately after receipt of a single invoice, and must be made without cash discount, unless otherwise agreed.

(2) Advance payments must, on request (invoice on account), be made for the value of the respectively proven, contractual services, including the stated, applicable sales tax amount. The services must be demonstrated in a verifiable list, which must enable quick and reliable evaluation of the services. Services here are also considered the components especially made and provided for the required service, as well as the materials and components supplied on the building site, if the client is assigned, on its choice, ownership of these, or is offered a relevant security.

(3) If the client can request for a defect to be rectified, they can also refuse payment of an appropriate part of the remuneration, but no more than three times the costs necessary to rectify the defect, after acceptance of construction work.

§ 6 Termination by the client, flat-rate damage compensation

If the client terminates the service contract before construction, the contractor is entitled to demand 10% of the total order sum as flat-rate damage compensation. The client reserves the right to prove a lower damage total.

§ 7 Technical information

(1) Additional work, which are requirements of the agreement services or which amend and complement these, and which do not directly form part of the contractual scope of services, must be provided by the building contractor. All services mentioned as additional services in the VOB/C DIN standards result in an additional remuneration claim as per § 2 Para. 2 upon commissioning.

(2) The client is advised that it must perform maintenance work on those components and services which require it. These are particularly mechanical and electrotechnical/electronic systems, or parts thereof, as well as metal fittings and common components. These also include exterior coatings (e.g. windows) which must be cured with paint or glazing and weather-proofing. Elastic joints are also maintenance components.

Maintenance work is not part of the contract scope, unless expressly agreed or concluded in a maintenance contract. Neglected maintenance work affects the lifespan and functionality of the components, without this giving rise to warranty claims against the contractor.

(3) Rights to insignificant, feasible deviations in the measurements and specifications, particularly for repeat orders, are reserved, insofar as these are common and in the nature of the services provided.

§ 8 Payment method

Payments by note are only permitted with a special agreement. Bills of exchange and cheques are only accepted on account of payment, and not instead of payment. Note charges and taxes are borne by the client.

§ 9 Offsetting

Offsetting against other undisputed or legal claims is excluded.

§ 10 Retention of title

(1) The contractor reserves the right to ownership of the item/service until receipt of all payments from the concluded contract. In the event of illegal conduct by the client, particularly in the event of payment default, the contractor is entitled to retract the item/service; the client is obliged to deliver these. The retraction of the item/service by the contractor does not, unless stated in the clauses of the Consumer Credit Act, imply withdrawal from the contract, unless the contract has expressly declared this in writing. Garnishment of the item/service always results in withdrawal from the contract. The client must immediately inform the contractor in writing of any garnishments or other third-party interventions, so that the contractor can file a suit as per § 771 of the Civil Procedural Code (ZPO). Insofar as the third party is unable to reimburse the judicial and extrajudicial costs of a suit as per § 771 ZPO, the client is liable for the contractor's resulting shortfall.

(2) The client is entitled to resell the item/service in normal business dealings; but it immediately assigns the contractor all claims for the final invoice amount (including VAT), incurred by its customers or third parties as a result of the resale, and regardless of whether the delivery object has been resold without or after processing. The client is authorised to collect this claim after its assignment. The contractor's power to collect the claim itself is not affected by this; however, the

contractor commits to not collecting the claim as long as the client appropriately complies with its payment duties and is not in default. If, however, this is the case, the contractor can then ask for the client to advise the contractor of the assigned claims and their debtors, provide all information necessary for the collection, hand over the associated documents, and advise the debtors (third parties) of the assignment. The contractor accepts the assignment.

(3) Processing or alteration of the delivery object by the client is always performed for the contractor. If the delivery object is processed with other items not belonging to the contractor, the contractor acquires co-ownership of the new item at a ratio of the delivery item's value to the other processed items at the time of processing. For the rest, the same applies for the item resulting from the processing as for the reserved item.

(4) If the item or service is inseparably combined or mixed with other items not belonging to the contractor, the contractor acquires co-ownership of the new item at a ratio of the value of the item/service to the other combined or mixed items at the time of the combination or mixing. If the combination or mixing is performed in such a way that the client's item is considered the main object, it is agreed that the client will proportionately transfer co-ownership to the contractor. The client preserves sole or joint ownership for the contractor.

(5) The client also assigns to the contractor the claim for hedging claims against it, which it incurs against a third party as a result of combining the item/service with a property. The contractor accepts the assignment.

(6) At the client's request, the contractor commits to floating the securities to which it is entitled, insofar as their value exceeds the claims to be safeguarded, insofar as these have not yet been settled, by more than 20%.

§ 11 Duty to cooperate in tax issues

The customer has the obligation, to cooperate with the seller in respect of the proof of documentation based on § 17 a Umsatzsteuereinführungverordnung. The obligation may involve the transfer of duties to third parties who have a contractual relationship to the customer.

The proof of documentation generally is submitted by the "confirmation of arrival" (Gelangensbestätigung) based on § 17 a Abs. 2 Nr. 2 Umsatzsteuereinführungverordnung. In case of a change of the laws the parties will agree on a different legally proof.

The customer may only submit a different proof of documentation after the seller has submitted a written agreement. The customer has the obligation to acquire all necessary information regarding the rules of proof. The seller's statements are not binding.

§ 12 Place of jurisdiction

If both contractual parties are merchants, the contractor's place of business is agreed as the exclusive place of jurisdiction. If the contractor has more than one place of business, the place of jurisdiction shall be that of the head office.