

General Terms of Delivery and Payment

WILHELM NIEMANN GmbH & Co., Melle

§ 1. Place of fulfillment, place of jurisdiction, governing law and scope of application

1. These terms apply to entrepreneurs, if the commercial transaction belongs to the concern of their commerce, to a legal person under public law or public special assets (§ 310 paragraph 1 German Civil Code). The legal regulation applies to all other business partners, particularly to consumer contracts.
2. Place of fulfillment for all rights and duties arising from this contract is for both parties exclusively the registered office of our firm.
3. Place of jurisdiction is the registered office of our firm. However, we are also entitled to sue the purchaser at his domicile.
4. The law of the Federal Republic of Germany shall be the governing law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) shall not apply.

§ 2. Quotation and conclusion of contract, prices

1. If the delivery is stipulated to be carried out 4 months after the contract conclusion, we will be entitled to pass on meantime increases in material prices, wages and charges to the buyer provided that these have come into effect at least 4 months after contract conclusion.
2. Our prices are excluding value-added tax and packing. The VAT shall be invoiced at the rate applicable at the time of delivery.
3. Only when explicitly confirmed, dimensions, weights and drawings shall be binding for the execution. Gross weight and box dimensions shall be indicated according to best estimation, however without engagement.
4. If the contract has not already been concluded verbally or via telephone in customary form in trade, it shall become effective with our written order confirmation. Later changes of the written contract are to be confirmed in writing for reasons of legal certainty.
5. We herewith expressly contradict to the buyer's purchase terms which may be deviant from our General Terms of Delivery and Payment; this dissent also applies in the case of the buyer having stipulated a special form for the dissent. Legal requirements shall apply in place of contradicting conditions, if a dissent is ruled out. Deviant purchase terms will only be accepted, if their application is confirmed by us in writing.
6. All data necessary for the order execution shall be stored, the purchaser agrees with that.

§ 3. Time of delivery

1. Delivery shall only be deemed to be delayed from our side, if the agreed time of delivery has been exceeded by 4 weeks, and if the buyer has admonished us after expiry of this prolonged period of time.
2. Stipulated delivery dates shall only be valid from the date of our order confirmation; in case of no order confirmation the delivery time shall be valid from the date of order acceptance. In both cases, however, the delivery time shall not be valid until all details for the order execution have been clarified; it is considered as fulfilled when the goods have left our premises by the end of the delivery time. The Seller shall not fall behind if he is hindered from fulfilling his delivery obligation by the occurrence of unforeseen circumstances – no matter whether these occur at our premises or at the sub-supplier's site - those circumstances which the seller is not responsible for or which could not be avoided despite of reasonable care, such as strikes, lock-outs, accidents and breakdowns which entail a partial or complete cessation of work, delays in delivery of essential raw materials and utilities, difficulties in energy supply or other cases of Act of God.
3. We shall be entitled to carry out partial deliveries and performances in appropriate form.
4. We shall be liable subject to the legal regulations as far as the underlying contract is a fixed deal in terms of § 286 para. 2 no 4 German Civil Code or of § 376 German Commercial Code. We shall be liable subject to the legal regulations when, as a consequence of a delay in delivery caused by us, the buyer lodges a claim that his interest in a further contract fulfillment has fallen into discontinuance.
5. We shall further be liable subject to the legal regulations, if the violation of the contract is due to us or wantonly negligent; default of our sales representatives or vicarious agents shall be incumbent upon us. Unless the delay is not due to our intentional default of the contract, our liability for indemnity shall be limited to the predictable, typically occurring damage.
6. We shall also be liable subject to the legal regulations should the delay in delivery caused by us be due to the culpable violation of an essential contractual obligation. However, in this case the liability for indemnity shall be limited to the predictable, typically occurring damage.

§ 4. Acceptance

Goods ready to deliver on the agreed date shall be picked up immediately. If the buyer is behind schedule with the take-over of the goods, we shall be entitled to store them in our own estimation at the cost and risk of the buyer as well as to invoice them delivered ex works or from stock.

§ 5. Packing, dispatch, transfer of perils

1. Packing is subject to our choice. We shall not bear the damages occurred in transit. The packing shall be calculated at a net cost price. If we do not obtain special instructions for the shipment, we are entitled to choose the type of dispatch. In this case we are not obliged to assume responsibility for the most favorably priced shipment. The dispatch is effected in all cases not prepaid.
2. With the surrender to the shipping agent, however, at the latest when leaving the factory, the risk passes over to the buyer – it does not matter who is paying the shipping costs.
3. If the dispatch or the acceptance is delayed due to circumstances which we are not responsible for, the risk will pass over to the buyer in that moment we informed about the readiness for dispatch. We shall then also be entitled to invoice the goods.

§ 6. Payment

1. Unless otherwise agreed upon, invoices shall be paid within 30 days after date of invoice with no deduction. The entrance of the equivalent amount is accepted as clearing.
2. A cash discount deduction is only admissible when it is expressly stipulated, the time period is held, and all previous invoices are fully paid.
3. We expressly reserve us the acceptance of bills of exchange or cheques; these are in principal only accepted for sake of payment and shall be only valid after redemption as payment with releasing effect. Discount charges are for the buyer's account and are to be reimbursed to us immediately in cash.
4. The buyer renounces to assert a retaining lien from former or other businesses of the current business connection. The set-off right with counter claims is only in so far valid as it is accepted by us and asserted as due for payment or legally binding.
5. All our claims comprising those for which we included bills of exchanges, shall become due immediately, if the terms of payment are not observed or if we learn about circumstances after the correspondent contract conclusion which might reduce the buyer's creditworthiness.

Moreover, we shall be entitled in such a case to execute still outstanding deliveries only against advance payment, unless the buyer has furnished security on our request.

We are entitled to rescind after an appropriate period of grace. Then we shall be allowed to prohibit a resale of the goods delivered under retention of title, and we can demand return or transfer of the immediate property at the expense of the buyer.

§ 7. Retention of title

1. Delivery of the goods is effected subject to retention of title according to § 449 German Civil Code including the following additions.
2. The goods shall remain our property until all existing and in future arising claims against the buyer of this business connection have been fully satisfied.
3. Our retention of title is in so far restricted as the property of the reserved goods easily passes over to the buyer as soon as all claims of our firm have fully been paid, and the transferred claims belong to the buyer. We undertake ourselves to release the securities with which we are entitled according to above mentioned regulation, in so far – up to our choice – as their value exceeds the securable claim by 20 % provided that, exempt from a delivery in a real current account ratio, a release shall only be effected for such deliveries or replacement values which are fully paid.

§ 8. Liability for defects

1. Legitimate complaints of the buyer presuppose that he has properly met his obligation to examine and reprimand according to § 377 German Commercial Code.
2. In case of damages occurred in transit, i. e. obvious damages to the packing or goods, the recipient is obliged to demand a corresponding written certification of the haulier. In this case the haulier must not hand out a purely signed receipt.
3. Other defective deliveries, particularly also those deliveries which are not conform to the order, shall be indicated in writing within 8 days in case of obvious defects, in case of concealed defects within 8 days after appearance of the defect; the date of delivery and the date of receipt of the complaint letter are decisive for the above mentioned time limit. Discrepancies from the order or deficiencies shall be indicated precisely.
4. Warranty claims shall not be valid, if the buyer refrained from giving crucial information about the expecting strain or if the defects result from violation of the individually project-oriented procedural guidelines of our firm, of the mounting instructions, improper use or handling, extraordinary and unpredictable strain, natural wearout or inventions or repair work made by the buyer or a third party.
5. In case of in due time justified complaints we are entitled to effect compensation of our own choice in form of either removal of the defects or of a replacement delivery (delivery of an impeccable good). Should the removal of the defects / delivery of replacement fail, the buyer will be entitled to either withdraw or to demand a reduction.
6. In case of amendments or replacements we shall bear all necessary expenditures of this purpose. This does not apply if the expenditures increase due to the bought goods having been transported to a new place of destination after delivery. In case of return or replacement the buyer must provide the delivered goods packed in proper form for transportation. The goods we have replaced will pass into our property.
8. We shall bear liability subject to the legal regulations when the buyer claims for damages which rely on purpose or gross negligence, incl. purpose or gross negligence of our vicarious agents. Moreover, we bear the liability subject to legal regulations when we violate culpably an essential contractual obligation. In both cases the liability for indemnity is limited to the predictable, typically occurring damage. This is not valid if we concealed a defect guilefully or if we undertook a guarantee of the existence of a feature.
9. For damages from injuries to life, body or health that are caused by a violation of duty we are not liable; this is also the case for the compulsory liability subject to the product liability law.
10. Besides, the liability for indemnity is excluded.
11. For purchase contracts a warranty of one year is agreed upon instead of the legal warranty. It begins with the transfer of perils.
12. In case of a recourse of delivery subject to §§ 478, 479 German Civil Code the period of limitation remains intact, being 5 years, valid from the date of return of the defect good.

§ 9. Overall liability

1. Another liability for indemnity as provided in § 8 is excluded – no matter of the legal type of the claim. This is in particular valid for indemnity claims due to faults on the occasion of the contract conclusion, due to other violations of duty, or due to tortious claims for replacement of damage in accordance with § 823 German Civil Code.
2. This also applies to the personal liability for indemnity of our employees, workers, assistants, representatives and vicarious agents provided that the liability for indemnity towards us is excluded or limited.

§ 10. Withdrawal, damage lump sum,

1. Should the buyer withdraw from the contract due to reason we are not responsible for or does he not accept our performance despite of a time limit and days of grace, we ourselves shall be entitled to withdraw from the contract. The withdrawal will be effective with receipt of the written declaration of withdrawal at the buyer. In this case we shall be entitled to claim a damage lump sum to the tune of 20 % of the order volume. The buyer must furnish proof of a minor damage whereas we are to assert a major damage.
2. Moreover, we have the right to withdraw subject to the cases Act of God and similar indicated under § 3 no. 2 unless the incident is caused by us or f. e. cannot be expected from us to be delt with later because of date difficulties and the peril of other contracts.

§ 11. Copyright, confidentiality

Illustrations, drawings and other technical documents remain property of the seller. Disrespect will be prosecuted. All the documents which have been provided on a mutual basis are to be kept strictly confidential.

Should the above mentioned obligation be violated the marred business partner is entitled to fully assert the resulting damage.

§ 12. Validity of terms

Above mentioned terms remain in force even then when one or more of these clauses are or become ineffective.

Additional mounting conditions:

1. Unless otherwise agreed upon or a date for the installation has been fixed, mountings shall basically be arranged 14 days before the requested installation date.
2. The following services are to be fulfilled by the customer before the mounting:
 - In order to effect an installation immediately after delivery, all constructional works must be finished before the mounting can be started. The foundation must be completely dry and set. The rooms, where the machine shall be installed, must be protected against atmospheric influences, be illuminated well and be heated sufficiently.
 - An apt access for the delivery must be provided.
 - An appropriate and safe against theft and damage, dry, lightened and lockable room for the storage of machine parts, materials, tools and similar must be provided close to the installation area.
 - Necessary means like energy, lifting platform or crane, fork lift, devices for the transport from the stockyard to the mounting destination as well as racks starting with a mounting height of 2 m as fit-up aid are to be provided for the whole mounting time, even beyond the usual work times of the customer.

- Skilled and unskilled workers shall be made available by the customer. We shall decide how many will be necessary.

- It is to be made sure that our services can be carried out without interferences and interruptions, and this even beyond the regular work time of the customer. Particularly the mounting area must be easily accessible to the technician. Their work must not be interfered by other assembly sections or similar. Hindrances like lines and circuits in the mounting area must be removed for the time of the works.

3. Extra pay: Services executed beyond our regular work times shall be invoiced by us with surcharge, if the customer expressly requests the implementation or continuation of the mounting works at these times or if they become necessary due to circumstances which the customer is responsible for.

4. Attendance time: waiting hours shall be invoiced depending on expenditure in addition to the correspondent valid daily wage rates, provided that the delay of the mounting start or the interruption of the mounting is due a lack of pre-requisites of the customer or due to interferences.

5. Instructions of the site manager for the execution of additional works which are not included in our contract shall be effected as time wage works at our correspondent valid hourly wage rate.