

§1 General

1. These terms of delivery and payment shall be a constituent part of all offers and contracts for the Vendor's deliveries of goods, including both current and future business relationships and shall apply – except as otherwise provided – to persons who carry out a commercial or independent occupational (contractor) function as well as legal entities under public law and special assets of public law. They shall preclude the Purchaser's terms and conditions of purchase.
2. Deviating agreements and terms and conditions shall be obligatory only if they were confirmed in writing by the Vendor.
3. The "General Terms of Delivery for Electrical Industry Services", including the extended retention of title, apply generally to our shipments; even if not explicitly mentioned in the offer or contract.
4. Advertising statements in product information or advertising materials as well as any technical information shall be non-binding. Unless otherwise expressly agreed, they shall not represent any agreed properties, neither a guarantee of quality or durability of the goods to be supplied by the Vendor. Guarantees shall only be accepted by the Vendor by means of an expressed written agreement with the Purchaser.
5. Technical documents (drawings, calculations, design proposals etc.) and samples shall remain the property of the Vendor. The Purchaser shall neither make these available to Third Parties or use/reproduce these themselves or via Third Parties. On request by the Vendor, the Purchaser shall be obliged to return these objects to him in their entirety and, where applicable, destroy any copies made of them, if they are no longer needed by him in the proper course of business or if negotiations do not result in the conclusion of a contract.
6. Legally relevant declarations or notifications which are to be submitted by the Purchaser to the Vendor after conclusion of contract (e.g. deadlines, notifications of defects, cancellations) shall require the written form in order to be valid (text format in line with § 126b of the BGB [German Civil Code (Bürgerliches Gesetzbuch)] is sufficient).

§ 2 Offers, Prices, Delivery Deadlines

1. Offers shall be subject to change and non-binding, subject to prior sale. Quoted prices shall only be regarded as fixed if they have been accepted in writing. All prices shall be stated exclusive of value added tax at the applicable rate as well as packaging and freight charges.
2. Even following the conclusion of the contract, the Vendor shall be entitled to increase prices by an appropriate amount provided that, following the conclusion of the contract, suppliers of the Vendor have raised their prices by at least 5% compared to the prices applicable at the time of the conclusion of the contract, and the price increase should offset this.
3. Agreed deadlines and dates shall be calculated from the date of the order confirmation and are valid subject to timely delivery by the Supplier's own contractors, provided the Vendor undertakes binding delivery dates in writing. The terms of delivery shall be taken to be complied with when the item of delivery has been shipped before the deadline.
4. The delivery period shall be extended by any period until the Customer has transferred or sent the information and documents required for executing the order.
5. Delivery prior to the agreed delivery date shall be possible depending upon the capacity of current production. The Vendor shall charge the corresponding cost for express production or early delivery; but at least an amount equal to 50 EUR.
6. Samples and models shall be deemed to be approximate articles for quality, measurements and colour.
7. Shipping information given shall be non-binding. Freight and shipping charges shall apply on the date of delivery. Other ancillary costs shall be borne by the Purchaser and recipient.
8. If a delivery programme is modified at the request of the Customer, the Vendor shall be entitled to charge the costs thereby incurred (additional charges) or make an adjustment to the price.

§ 3 Place of Performance, Delivery, Delay, Impossibility

1. The place of performance for the Vendor's deliveries shall be Wuppertal, Germany.
2. Shipment shall be effected at the risk and expense of the Purchaser, freight collect from the Wuppertal warehouse and supply plant respectively. The selection of the type of dispatch shall remain the responsibility of the Vendor.
3. Also, in the case of freight-free delivery, shipment shall be effected at the risk of the Purchaser. Insurance shall only be taken out at the request and expense of the Purchaser.
4. Industrial disputes or unforeseen extraordinary events such as governmental measures or traffic disruption etc. shall release the Vendor from its obligations for

- the period of the delay caused by the event or, in the case of impossibility, from his obligation to deliver the goods.
5. If the Vendor does not perform, or not entirely perform within the contractually-defined period, he shall, according to statutory provisions, only fall into arrears through separate reminders of the Purchaser. In this event, the Purchaser may demand lump-sum compensation for damages caused by the delay in the amount of 0.5% of the agreed net purchase price for each completed calendar week of the delay, but limited to 5% of the value of each part of the total delivery which, because of the delay, cannot be used in a timely manner or as per agreement. The vendor likewise has the right to prove that the Purchaser has incurred no or significantly lower damages. The Purchaser shall be obliged to give immediate notice of possible risks of damage.
 6. Return deliveries shall only be accepted freight-free with the prior authorisation of the Vendor, and less general restocking fees. Restocking fees shall vary depending on the manner of the purchased item, but in any event no less than 20% of the goods value.

§ 4 Partial Deliveries and Transfer of Risk

1. The Vendor shall be entitled to make partial deliveries, if not otherwise expressly agreed. Partial deliveries shall be considered as independent deliveries for financial obligations, transition of risks and guarantee liabilities. The Customer shall not be entitled to refuse independent partial deliveries.
2. The risk shall pass to the Customer upon handover of the contractual product to the carrier, his agent or other persons appointed by Vendor or as soon as the shipment with the delivery items leaves the plant or warehouse of the Vendor. Should shipping be delayed or become impossible through no fault of the Vendor, the risk shall pass to the Customer upon notice being issued that goods are ready for dispatch. These provisions shall also apply for returns to the Customer following fault rectification or payable services. This shall apply irrespective of who bears the transport costs.
3. In the event of a defect present before risk was transferred, the statutory warranty rules shall apply providing that the manner of rectification (repair or delivery of a new item) is at the Vendor's option.

§ 5 Payments

1. In principle, invoices shall be payable immediately upon receipt, and without deduction.
2. New as well as existing Customers, for which no timely payment receipt is expected (following assessment, experience of the Vendor), shall make payment in advance.
3. The granting of a discount shall require special agreement and presupposes that the Vendor has no existing claims against the Customer.
4. Bills of exchange and cheques shall only be accepted on account of performance.
5. In the event of payment default by the Purchaser, the Vendor shall be entitled to only make further deliveries against cash in advance and to make all deferred invoice amounts immediately payable. The regulation in § 353 of the HGB [German Commercial Code (Handelsgesetzbuch)] shall remain unaffected.
6. Offsetting with counterclaims shall be permissible only to the extent that these are recognised by the Vendor and are due for payment or legally binding.

§ 6 Notification of Defects, Warranty, Limitation Period

1. The obligation of inspection and notification of defects in § 377 of the HGB [German Commercial Code (Handelsgesetzbuch)] shall apply providing that the Vendor shall be immediately notified in writing, but at the latest within a period of five (5) working days following receipt of the goods, of obvious material defects, incorrect deliveries and quantity deviations. The Vendor shall be notified in writing of any concealed defects immediately following their discovery. In the event of a delayed or otherwise irregular notification of defects according to the aforementioned regulations, the Purchaser shall lose his defect rights, unless the defect has been maliciously and intentionally hidden from the Purchaser by the Vendor. Transport damage shall be immediately notified to the Vendor in writing.
2. Possible defect claims of the Purchaser shall become statute barred one year following delivery unless a case pursuant to § 438 Para. 1 No. 1 and 2 of the BGB [German Civil Code (Bürgerliches Gesetzbuch)] or § 479 of the BGB does not exist, or the Vendor has not maliciously and intentionally hidden the defect from the Purchaser.
3. The Vendor's liability for damages or futile expenses shall conform with statutory provisions with the following regulated restrictions: The Vendor's liability for damages or futile expenses, irrespective of legal grounds, shall only take effect if the damage or futile expenses were caused by the Vendor, its bodies or by one of its vicarious agents by culpable violation of an obligation whose

fulfilment is essential to the proper execution of the contract in question and on whose fulfilment the Contractual Partner may ordinarily rely (essential contractual obligation), or result from grossly negligent or intentional violation of contractual obligations by the Vendor, its bodies or by one of its vicarious agents.

4. Should the Vendor violate an essential contractual obligation, without the presence of intent or gross negligence, liability for compensation shall be limited to the reimbursement of foreseeable damages typically appearing upon conclusion of the agreement. In such an event, the Vendor shall not be liable for consequential damages typically appearing upon conclusion of the agreement.
6. The existing liability limitations in No. 3 and 4 as well as the reduction of the limitation period according to para. 2 shall not apply unless claims resulting from injury to life, body or health are invoked against the Vendor as well as in cases of statutory liability in accordance with the Produkthaftungsgesetz [German Product Liability Law]. Further liability for damages shall be excluded, regardless of the legal nature of the asserted claim.
7. We shall exclude any damage due to the specifications or incorrect operation (improper use of application) of the Purchaser (end user).
8. In the event of a claim, the Vendor shall be contacted immediately in order that justified claims may be expedited as quickly as possible. In the event of an unjustified claim, the Vendor shall reserve the right to charge for the resulting inspection and testing costs.
9. Specialised parts and articles which were fabricated to the specifications of the Customer or were pre-fabricated may not be cancelled or returned. Cancellation of a corresponding contract shall only be possible insofar as the provision of the primary materials and/or fabrication has not yet taken place.
10. For components which are produced in contract manufacturing by the Vendor, Tensometric shall not accept any warranty claims for suitability and characteristics as said components are produced according to the specifications of the Customer (Purchaser).

§ 7 Retention of Title

1. The delivered goods (reserved goods) shall, as a precaution, remain the property of the Vendor until all present and future requirements of the Vendor towards the Purchaser arising from the contract of delivery and the current business relationship with the Purchaser (a final outstanding balance arising from a current account agreement limited to this business relationship) have been fulfilled. The Purchaser shall be obliged to handle the reserved goods with care and, at their own expense, ensure said goods against fire, water and theft in the amount of the replacement of the purchased item.
2. The reserved goods may not be pledged to Third Parties before complete payment of all secured claims, nor may be transferred by way of security. In the event of debt execution measures by Third Parties against the reserved goods, the Purchaser shall immediately notify the Vendor, providing all documents necessary to object to these proceedings.
3. The Purchaser shall be entitled, according to the following provisions, to process and/or to sell the reserved goods within the scope of ordinary business practices.
4. The retention of title shall cover the products which are produced by processing, mixing or combination of our goods at their full value. If third party title rights are created as a result of the processing, mixing or combination with goods of Third Parties, the Vendor shall be granted co-ownership in the newly created products in the ratio of the invoiced value of the processed, mixed or combined goods. Incidentally, the same shall apply to the produced product as to the goods delivered under reservation of title.
5. As security, the Purchaser shall assign to the Vendor here and now, as a whole or in a sum equal to any co-ownership share which the Vendor acquires, the claims against Third Parties ensuing from reselling. The same shall apply to any other claims that take the place of secured goods or otherwise accrue with respect to reserved goods, e.g., insurance claims or tort claims resulting from loss or destruction of reserved goods. The Vendor shall accept the assignment. The Purchaser's duties under para. 2 hereof shall also apply to the claims assigned.
6. The Vendor shall revocably authorise the Purchaser to collect any assigned claims according to para. 5. The Vendor shall not make any use of its own power to collect, unless the Purchaser meets its financial responsibilities, also towards Third Parties, if no petition for the opening of insolvency proceedings has been filed and no other lack of his financial capacity occurs. At the Vendor's request, the Purchaser shall name the debtors of the claims assigned and notify them of such assignment; the Vendor shall be entitled to inform the debtor of the assignment.
7. With pecuniary difficulties of the Purchaser (insolvency, bankruptcy or similar), the Purchaser shall be obliged to inform the Vendor immediately, if possible prior to the awarding of the tender or contract.

8. In the event of payment default by the Purchaser, the Vendor shall be entitled, following a reasonable grace period set for the Purchaser to comply and without prejudice to further (claims for damages) entitled to the Vendor, to withdraw from the contract and to take back the reserved goods. Statutory provisions concerning the dispensability of setting a deadline shall remain unaffected.

9. If the value of the granted securities exceeds 10% of the outstanding debt, the Vendor shall thus be obliged in this respect to retransfer or clear the goods at his own option. Upon redemption of all of the Vendor's claims from the business connection, the ownership of the reserved goods, subject to the retention of title and the assigned claims, shall be transferred to the Purchaser.

§ 8 Applicable Law, Place of Jurisdiction

1. For all legal relations between the Vendor and the Purchaser, the law of the Federal Republic of Germany shall apply exclusively. The application of intellectual property rights and the United Nations Convention for the International Sale of Goods shall be excluded.
2. If the Purchaser is a merchant, legal entity under public law or special fund under public law, the sole place of jurisdiction for all disputes arising from the business connection between the Vendor and the Purchaser shall be Wuppertal, Germany. The Vendor may also bring action at the Purchaser's place of business.