

I. General information

1. The following terms and conditions of sale and delivery apply to all contracts, deliveries and other services including all consulting services, which are not subject to a separate consulting contract and provided that they do not have been amended or excluded explicitly in writing by us. They apply for both, contracts with companies in terms of § 14 BGB or corporate bodies under public law and public trusts as well as for contracts with consumers in terms of § 13 BGB.
2. Terms and conditions of customers won't become element of our contracts, even if we have not objected to them explicitly or have delivered contractually agreed liabilities without reservation. Agreements deviating from these terms and conditions should be included in the order confirmation.

II. Offer and Scope of Supply

1. All offers are always to be understood as conditional offers. The documents pertaining to the offer such as illustrations, drawings, calculations, indications of weight, measurements and services are only approximate, unless they have been explicitly designated as binding. Changes thereof may only be seen as inappropriate and might be rejected by the customer if it is not in accordance with standard commercial practice. We reserve the property rights and copyrights to all cost estimates, drawings, calculations and other documents. They may only be made accessible to third parties with our written agreement.
2. A contract is only concluded if we send a written order confirmation or by delivery of the order.
3. All agreements are to be added in writing to the respective contract of sale. This applies in particular to ancillary agreements, assurances and belated amendments.
4. Design and shape changes of the delivery item are reserved, as far as the delivery item is not significantly altered and the changes are reasonable for the customer.
5. The scale of the object of purchase (delivery, appearance, performance, measurements, weights, etc.) is to be found in the descriptions that have been handed out to the customer. The object of purchase, in particular its measurements, performance, nature and appearance are based on the data provided by the customer and are necessary for the production of the goods, such as model, year of construction, power, torque, RPM, diameter of shaft, cone of shaft, material, etc.

III. Prices and Payment

1. All prices are always to be understood net ex works in Bremerhaven plus the applicable value-added tax, excluding freight, packaging and customs. If the delivery of the object of purchase should take place after more than three months after conclusion of the contract, we reserve the right to increase prices reasonably when price increases from our suppliers or unexpected increases in wages or material costs occur. We are only bound to the agreed prices for the agreed delivery time, but not more than 14 days. Any additional expenses due to default of acceptance of the customer, are to be covered by the customer himself.
2. If nothing else has been agreed between the parties, the payment is due without any deductions together with the delivery and receipt of the invoice within ten days to the bank account of S.P.W GmbH. We are entitled to issue reasonable partial invoices.
3. Crediting of bills or cheques are subject to the day of receipt, less the expenses with the value date of the respective day.
4. The customer is not entitled to offset with any counterclaims that we have denied or which have not been confirmed legally. He can assert a right of retention only from claims arising from this contract. The right of retention can only be enforced by the customer for claims which are elements of this contract. In case that a customer claims a defect, he may withhold payments only to the extent, representing an appropriate ratio to the occurred defects.

IV. Delivery Time

1. The delivery time shall commence upon conclusion of the contract, but not before the relevant specifics like measures etc. have been communicated by the customer. We reserve the right to correct the delivery time in case we have not been supplied correctly or in time ourselves. In case of force majeure and officially allowed industrial actions such as strikes or lock-outs, which are beyond our control, the delivery periods will be extended appropriately.
2. In case a delivery is delayed by more than two months, the customer is entitled to withdraw from the contract. If the delivery time is extended or we are free from the obligation to deliver, the customer is not entitled for claims from this.
3. We do not have to stand up for the fault of our suppliers such as delays or failures, if we have selected our suppliers thoroughly and have monitored the delivery time appropriately.

V. Passing of Risk and Transport

1. We can choose shipping route and shipping method. We will only dispatch the goods and insure the delivery if the customer explicitly tells us to do so. The cost will be covered by the customer.
2. In case of a sales shipment, passing of risk to the customer will take place with handing over the goods to the carrier or when leaving the warehouse at the latest. This also applies to partial deliveries but not if the customer is a consumer in terms of § 13 BGB.
3. If the shipment is delayed as a result of circumstances, caused by the customer, the risk will be passed over to the customer with the day on which the handover had been offered.
4. We are entitled to partial delivery.

VI. Reservation of Ownership

1. We reserve the property rights to all delivered goods - also to those that were already installed or connected otherwise with third-party ownership - until complete payment of the goods or until complete payment of all claims arising from our business relationship with the customer in terms of § 14 BGB. These items are listed as „reserved property“ in the following.
2. The customer is obliged to treat the purchased good and the “reserved property“ with care and to protect it against interferences of third parties.
3. The customer is not allowed to pledge the purchased good and the “reserved property“ or to use it as chattel mortgage without our explicit agreement. The customer is obliged to inform us immediately in written in case of a garnishment or in case of other interventions by third parties.
4. A customer in terms of § 14 BGB is entitled to process and sell the delivered goods and “reserved property“ in the course of business. We reserve the right to withdraw this authorization if the situation is well-founded. However, the customer does already now sign over all debts to the amount of the balance due, including VAT, to which the customer is entitled. In this case it is irrelevant, if the goods have been sold with or without further processing. The customer is entitled to collect his debts after he has signed them over, however we continue to be entitled to collect the debts ourselves. At all times we are entitled to withdraw the direct debit authorization. The customer is obliged to announce the signed-over debt, the debtor as well as all relevant information to be able to collect the debt. Furthermore the customer is obliged to hand over the necessary documents and to inform the debtor of the signed-over debts. We already now accept the cession.
5. In case of handling and converting of “reserved properties“ by the customer, the customer will not acquire property rights. We expressly agreed that we are fabricators in terms of § 950 BGB.
6. In case the goods of sale is connected to or mixed with goods we don't owe, we acquire co-ownership of the new goods in the ratio of the invoice value of the mixed/connected goods.

VII. Guarantee and Notification of Defects

We are liable for defects as follows:

1. A customer in terms of § 14 BGB is obliged to examine the delivered goods after reception and check the correct amount, quality and guaranteed characteristics as well as any subjective and objective requirements the customer may have. The customer has to report immediately any defects occurred during the dispatch, e.g. damaged packaging etc. Any other obvious defects have to be reported in written within two weeks after reception. The warranty expires if the report is handed in too late.
2. We are obliged to repair, exchange or replace defective goods at our own discretion, if the defects arose as a result of a circumstance prior to the transfer of risk. For this purpose, the customer has to make the goods available free Bremerhaven. Under no circumstances the goods should be used if any possible defects have been detected. Any damages resulting from that are at the expense of the customer.
3. We are unable to offer guarantee for damages that occurred due to the following reasons: unsuitable or improper use, poor assembly or operation by the customer or a third party, missing maintenance, normal wear and tear, inappropriate resources or substitute materials or external factors, special instructions of the customer in respect of construction or material selection.
4. The customer shall grant a reasonable period of time and the necessary opportunity to eliminate the defect.
5. The warranty of new goods expires in all cases after 12 months after the transfer of risk. For contracts with consumers in terms of § 13 BGB the warranty expires for new goods after 24 months and for second-hand goods after 12 months after transfer of risk.

If the defect has become apparent within this period of limitation, the limitation period shall not start to expire before the end of four months after the time when the defect became apparent for the first time. If the consumer has handed over the goods to the trader or, at the trader's request, to a third party for the purpose of subsequent performance or the fulfilment of claims arising from a guarantee, the limitation period for claims based on the claimed defect shall not start to run before the expiry of two months after the time when the repaired or replaced goods were handed over to the consumer. Claims which arise due to damages caused to someone's health, physical injuries, or death or due to a defect which is our actual fault, or defects due to gross negligence of us or our vicarious agents are exempted from this time limitation. These claims are subject to the legal limitation of claims.

In case of contracts for work, claims which arise due to damages caused to someone's health, physical injuries, or death or due to a defect which is our actual fault, or defects due to gross negligence of us or our vicarious agents are limited with 12 months.

VIII. Compensation for Damages

1. We are not liable for marginal breaches of duty, which have been committed neither willful nor reckless of consequences.

We reject the agreement of contractual penalties. We contradict to any contractual penalties that might be part of the terms and conditions of the customer. Under no circumstances these penalties will become elements of our contract.

2. We are not liable for indirect damages that may result from a defective item, such as operating losses, loss of profits, consequential damages to items which have not been delivered by us or individuals.
3. We limit the compensation of the customer in case of exceeding the time of delivery on the foreseeable, typically occurring loss. However the resulting compensation is limited on 2 % for every completed week and to a maximum of 10% of the net purchase price.
4. If the customer is obligated to compensate damages due to non-acceptance, we can demand a lump-sum of 25% of the net order value as compensation. We reserve the right to plead a higher, concretely to be calculated damage.

IX. Place of Performance, Place of Jurisdiction and Applicable Law

1. Place of performance and exclusive place of jurisdiction for deliveries and payments, as well as for all disputes between the parties is Bremerhaven. If the customer is consumer in terms of §13 BGB, the place of performance is the residence of the customer or the named destination in the case of a sale by delivery.
2. For the relations between the contracting parties, solely the law of the Federal Republic of Germany is applicable. The UN-law will not be used.

X. Data Protection Clause

1. According to Federal Data Protection Act § 33, we point out that the contract data, in particular personal data of the customers will be saved in a data processing system. The saved data will not be made available to unauthorized third parties.

XI. Writing Form and Saving Clause

1. If individual provisions or separable parts of individual provisions are or become invalid, this shall not affect the validity of the remaining provisions or parts of the provisions. The legal provision shall replace the ineffective provision or the ineffective part of the provision. The interpretation of the regulations by our customers is not relevant.

XII. Product Liability

1. If the customer processes our products and thus will become manufacturer in accordance with § 4 Product Liability Act, the customer indemnifies us from the product liability according to § 1 Product Liability Act. This does not apply in the event that a product defect is caused by an intentional or grossly negligent breach of duty on our part.

XIII. Instruction of Withdrawal

1. If a contract has been concluded via distance selling (telephone, fax, e-mail and online shop) the customer can withdraw from the contract according to the separate instructions of withdrawal. In case of a withdrawal, the customer pays for the cost of reshipment, if the delivered good correlates with the ordered goods and if the prize of the reshipped good does not exceed € 40,00 or in case that the prize exceeds € 40,00, if the customer has not yet paid the invoice or an agreed part payment. Otherwise we will pay the cost of reshipment.