

General Delivery and Payment Terms

1. General

Only the following terms and conditions shall be subject to the contract concluded between customer and supplier. All agreements and offers shall base on the terms and conditions of the supplier.

Conditions of purchase and other deviating conditions of the customer shall be non-binding for the supplier and even then, if the customer included a separate defence clause in his terms and conditions.

Collateral agreements shall only be valid if they will be agreed in writing. Otherwise, the invalidity of individual items does not affect the effectiveness of the general delivery and payment terms.

2. Offer and Conclusion of Contract

The supplier's offers shall be subject to change and will only become effective upon submission of a written order confirmation.

Any oral agreements shall only be binding on the supplier if and when they will be confirmed in writing, or if they will be complied with by sending the goods and the invoice.

The supplier shall reserve all property rights and copyrights in drawings and other documents. They may only be made available to third parties with the written consent of the supplier. Any drawings and other documents being part of the offers shall be, if the contract is not awarded to the supplier, be returned immediately upon request. The customer warrants that the provided documents do not infringe any property rights of third parties.

3. Scope of Delivery

The mutual written declarations shall be decisive for the scope of supplies and services. If a contract is concluded without providing such declarations, either the written order confirmation of the supplier, or if such does not exist, the written order of the customer shall be decisive.

4. Delivery time

The deadline for the supplies and services (delivery period) shall commence as soon as all details of the execution have been clarified, both parties have reached an agreement on all terms of the contract and the supplier has sent the written confirmation. The delivery period refers to the completion at the factory and requires a timely fulfilment of the contractual obligations of the customer.

If these conditions are not met, the period will be extended accordingly. An extension of the deadline will also occur if the failure to meet the deadline is due to circumstances, which the supplier has not caused intentionally or by gross negligence. The supplier's liability for damage caused by delay, based on a negligent breach of the contract by the supplier, shall be limited to the damage predictable on the date of concluding the contract. By the way, the liability of the supplier and its vicarious agents shall be excluded for slight negligence. If shipment is delayed at the request of the customer, a monthly storage fee of 0.5% of the invoice amount shall be paid by the customer as from the notification of the readiness for delivery, unless the supplier can furnish proof of higher costs.

5. Transfer of Risk

The risk is transferred to the customer by dispatch ex work, even if free delivery has been agreed on. If the delivery is delayed through the fault of the customer, the risk will be transferred to the customer already as from the date of readiness for shipment. Insurances against transport damage, breakage, fire and water damage shall only be taken out by order of and at the expense of the customer.

6. Shipping

Transport route and type shall be determined by the supplier, unless otherwise specified by the customer. The receiver has to reclaim any damage resulting from the shipment immediately upon receipt of the goods at the postal service, or Bundesbahn or the forwarding agent who delivers the goods, and shall have certified this respective damage.

7. Default of acceptance

If the ordered goods are not accepted in accordance with the agreement, the supplier may, after setting a reasonable grace period with refusal to accept, reject the contract performance and claim damages for non-performance.

8. Liability for defects

The Supplier shall be liable only for defects, including the lack of assured properties if they occur within one year after the transfer of risk and affect, to a considerable extent, the serviceability of the goods or services supplied.

It shall be left to the supplier to rework at least twice, at his option, any parts or services, to deliver or render them once again.

The identification of the above-mentioned defects must be reported immediately to the supplier in writing.

For the purpose of removal of defects, the customer shall grant the supplier a reasonable period of time and give him the opportunity to remove them. Otherwise, the supplier shall be kept indemnified from any liability for defects.

Any losses shall be excluded from liability losses that are based on normal operational wear and tear, or that occur after the transfer of risk by faulty or inappropriate handling, excessive load and inappropriate operating materials.

All wear parts are excluded from warranty. Any warranty claims are omitted if Phototherm systems have been used or repaired by untrained or insufficient qualified persons.

In case of changes and/or non-professional corrective maintenance work on the delivery object, no liability shall be assumed for the damage resulting thereof. As regards third party products, the supplier's liability shall be initially limited to the assignment of the warranty claims he is entitled to against the first supplier of third-party products. If these cannot be enforced without judicial assistance, the supplier shall be liable again after the reassignment of the warranty claims.

As regards any further claims of the customer, in particular claims for losses that did not occur at the delivery object itself, the supplier shall be liable only in cases of intent or gross negligence.

The above provisions under paragraph 8 shall apply mutatis mutandis to such claims of the customer caused by a consultation before or after the conclusion of the contract, or through a breach of contractual secondary obligations.

9. Prices and Payment

Prices shall be ex works, excluding packing, unless anything else has been contractually agreed on.

The payments shall be affected immediately cashless without any deductions, unless otherwise stipulated by contract.

The acceptance of bills of exchange or checks shall be accepted as payment only, the cost of discounting and collection shall be borne by the customer. The customer may set off only those receivables that are undisputed or legally binding. Representatives shall not be authorized to collect payment, unless they have been expressly authorized in writing.

10. Supplier's right to cancel the contract

If the supplier gets aware of a deterioration of the financial situation of the customer after conclusion of the purchase contract, the supplier may require advance payments or securities for consideration, or withdraw from the contract by taking the expenses incurred by him into account.

11. Retention of title

The supplier shall retain title to the delivery object until receipt of all payments based on the delivery contract including interest and costs of any possible litigation.

The supplier shall be entitled to insure the delivery object to which he has reserved the property, at the expense of the customer, against fire, water and other losses, if the customer has verifiably not concluded himself an insurance policy.

In the case of the existence of an overdraft, the property in the goods delivered shall remain with the supplier until all receivables existing at the conclusion of the contract have been settled.

In the case of resale, the customer's claims shall be considered assigned upon conclusion of the resale contract in the amount of the receivables still outstanding, even if the customer has already re-engineered, processed or installed the goods.

The supplier shall be entitled to charge an additional fee of 10% of the sales price in asserting its retention of title, in addition to the proven costs and demands.

The customer may neither pledge the delivery object until full payment, nor assign it as safety. In case of seizures, confiscations or other acts by third parties, the purchaser shall notify the supplier immediately.

The enforcement of the reservation of ownership, as well as the seizure of the delivery object by the supplier shall not be considered withdrawal from the contract.

12. Impossibility, contract adjustment

If the supplier is unable to render the performance he is obligated to, due to his fault, the liability of the supplier shall be limited to losses foreseeable upon the conclusion of the contract. Any liability for slight negligence of the supplier or his vicarious agents shall be excluded. The customer's right of withdrawal from the contract shall remain unaffected. If incidents occur that are unpredictable for both parties in terms of a significant change in price due to scarcity of raw materials, which substantially change the economic importance or the content of the delivery or performance or considerably affect the supplier's business, then the content of the contract shall be reasonably adjusted. As far as economically unreasonable, the supplier shall have the right to withdraw from the contract.

13. Place of performance, jurisdiction, governing law

The place of performance for delivery, performance and payment shall be Saarbrücken (Germany). The sole place of jurisdiction shall be, if the customer is a merchant, the court being competent for Saarbrücken (Germany) as regards disputes resulting directly or indirectly from the contract. The supplier shall be entitled to sue at the headquarters of the customer.

The contractual relationships shall be governed by the laws of the Federal Republic of Germany, excluding the rules on conflict of laws. The German version of the text of the agreement shall prevail.