

GENERAL TERMS AND CONDITIONS

Empl Fahrzeugwerk GmbH Deutschland / Zahna-Elster

§ 1 Validity of the Conditions

1. These terms and conditions apply to work contracts, contracts for labour and materials and purchasing contracts.
2. The deliveries, services and products offered by the company are exclusively based on these terms and conditions. They shall therefore apply to all future business relationships, even when they have not again been explicitly agreed. The conditions are deemed to have been accepted at the latest when the goods or services are accepted. Any counter-claims by the customer with reference to their own terms and conditions are hereby rejected.
3. All agreements concluded between the company and the customer as part of the implementation of the contract must be documented in writing. This also applies to waiving the requirement of written form.

§ 2 Offer and Conclusion of Contract

1. The products offered by the company are subject to change and descriptions are not binding. Notices of acceptance and all orders require written or electronic confirmation by the company to be legally valid.
2. The sales staff of the company is not authorised to enter into supplementary verbal agreements or to provide oral guarantees that exceed the scope of the written contract.

§ 3 Prices

1. The company shall treat any prices quoted in its offers as binding for 30 days after issuing the offer, unless otherwise agreed. In all other cases, the prices stated in the company's order confirmation shall be binding. The company is entitled to charge the new list price where the company has a list price for the goods concerned and where this price has increased in the time between conclusion of the contract and delivery, irrespective of any fixed-price agreements. Fixed-price agreements must be explicitly identified.
2. Prices are valid ex works and include loading at the plant, but exclude packaging and unloading, where no other agreement has been concluded.
3. All prices are net prices and VAT at the legally prescribed rate must be added.
4. Additional deliveries and services shall be separately agreed and invoiced.

§ 4 Payment and Due Date

1. Settlement of company invoices is due 14 days after the invoice date without deductions, where no other agreement has been concluded. The company shall be entitled to allocate payments made by the customer to older debts first, even where the customer's regulations state otherwise, and shall inform the customer of such allocations. When costs or interest have already accumulated, the company shall be entitled to allocate the payment to the costs first, then to the interest and finally to the main service.
2. A payment shall only be deemed to have been completed when the company can dispose of the amount without restrictions. Until this time, the payment shall only be deemed to have been received in lieu of formal payment according to Section 364 Part 2 of the Civil Code and all applicable costs shall be charged. Payments received in lieu of formal payment shall also be used to settle the claims of the company related to the reversal of any transaction.
3. The customer shall only be entitled to set-off, retention or deduction when the counter-claims have been the subject of a court ruling or when they are not disputed, even when complaints or counter-claims have been instituted. This excludes claims resulting from the same contractual relationship.
4. The entire remaining debt shall fall due in the event of a part-payment or other form of delayed payment, in the event that the company should learn of circumstances that justify doubts about the creditworthiness of the customer. Circumstances according to Point 1 above particularly include the following:
 - the customer generally stops payments
 - individual foreclosure steps are taken against the customer
 - insolvency proceedings are instituted against the customer, or
 - uncovered cheques are issuedThe company is furthermore entitled to demand payment in advance or collateral security.
5. The entire debt, including the agreed interest accumulated up to the due day, shall fall due without taking into account the maturity of possible bills of exchange, where payment in instalments has been agreed and the customer is late in paying at least two full or partial consecutive instalments and where the late payment concerns at least 10% of the total net price, or at least 5% of the total net price where the term of the payment agreement is longer than three years.

§ 5 Delivery Period, Late Delivery

1. Adherence to the delivery date or lead time by the company presumes that all commercial and technical issues have been settled between the contract parties and that the customer has appropriately carried out all their duties resulting from the contract in good time. The delivery date or lead time shall be extended accordingly where this is not the case. An extension shall not be applicable when the company is responsible for the delay.
2. The delivery date or lead time shall be deemed to have been adhered to when the goods have left the supplier's factory or their readiness for delivery has been reported in due time. The acceptance date is relevant where acceptance has taken place, except in cases where refusal of acceptance was justified. Alternatively, adherence to the delivery date or lead time shall be determined by the date on which the company reports the item to be ready for acceptance.
3. The company shall not be responsible for delivery and service delays due to force majeure or events that make it difficult or impossible for the company to deliver, including strike, lock-out, orders issued by the authorities etc., including cases in which such events occur on the premises of the company's suppliers or their sub-suppliers and where binding lead times and deadlines have been agreed. This shall entitle the company to postpone the delivery or service by the duration of the delay plus an appropriate start-up time, or to withdraw from the contract either fully or partially in respect of the part of the contract not yet fulfilled. The company shall immediately inform the customer about the start and, insofar as this is predictable, the expected end of the delay.
4. The customer shall be entitled to withdraw from the contract regarding the parts of the contract that have not yet been fulfilled, following an appropriate notification period, where the delay persists for longer than three months. The customer shall not be entitled to damage claims when the lead time is extended or the company is released from its obligations. The company can only

institute a claim in respect of the conditions mentioned above when it informs the customer about this with immediate effect.

5. If the company is late with delivery and the customer has suffered verifiable damage, the customer shall be entitled to claim lump-sum compensation for such a delay where this has been contractually agreed. Such compensation shall amount to 0.5% of the value of the delayed deliveries or services for each completed week of delay, up to a maximum of 5% of the value of the deliveries or services affected by the delay. Any additional claims are hereby excluded, except when the delay is due to gross negligence or an even more severe misdemeanour on the part of the company.
6. The company shall at all times be entitled to make partial deliveries or to provide partial services, except where such a partial delivery or partial service is of no interest to the customer.
7. The company shall be entitled to claim damages when the customer is late in accepting the goods or does not accept the service offered to them in accordance with the contract within one month of receipt of notification that it is ready for acceptance. The risk of accidental deterioration or accidental perishing (perils) is transferred to the customer as soon as they are late with acceptance.

§ 6 Transfer of Risk, Acceptance, Payment Risk

1. The risk shall be transferred to the customer as soon as the goods have been handed to the person handling the transport or has left the company's warehouse for dispatch purposes. The goods shall be deemed to have been handed over when the customer or the person handling the transport has started to load them. The risk shall be transferred to the customer at the time when readiness for dispatch is reported where such dispatch is delayed at the request of the customer.
2. The risk shall be transferred to the customer on the agreed acceptance date where acceptance is required and in other cases following expiry of an acceptance period of one month after notification that the goods are ready for acceptance. Acceptance may not be refused on the grounds of a minor fault that the company has acknowledged.
3. The company agrees to arrange insurance as requested by and at the expense of the customer in the event that the risk is transferred to the customer.
4. Following the transfer of risk to the customer, the company shall retain its right to claim compensation in the event that the goods should perish or deteriorate. This shall not apply if the company is responsible for the destruction or deterioration of the goods. The company shall only be responsible for deliberate action and gross negligence following the transfer of risk to the customer.

§ 7 Retention of Title, Right of Withdrawal

1. The goods shall remain the property of the company until they have been fully paid for. The customer shall store the company's property without charge.
2. Where third parties institute claims concerning such conditionally delivered goods, especially attachment, the customer shall be obliged to point out that the item is owned by the company and shall immediately inform the company, to enable it to enforce its property rights. The customer shall be liable for court costs and extra-judicial costs incurred by the company in this context where the third party is not in a position to pay them.
3. The company shall be entitled to withdraw from the contract and demand the return of its goods if the customer violates the contract, in particular due to late payment.
4. The company shall be entitled to insure the goods against theft, breakage, fire, water and other damage at the expense of the customer where the customer cannot prove that they have arranged such insurance.
5. The customer may not sell, pledge or assign goods that are still the property of the company.
6. An application for instituting insolvency proceedings against the customer shall entitle the company to withdraw from the contract and to demand the immediate return of the goods.
7. The company retains the property rights and copyright regarding samples, cost proposals, drawings and similar information in physical and other form, including in electronic form. These rights may not be transferred to third parties.

§ 8 Rights of the Customer in the Event of Faults

1. The goods shall be delivered free of manufacturing and material faults. The period for fault claims shall be one year after the transfer of risk.
2. All claims concerning faulty goods shall become void where the company's operating or maintenance instructions have not been adhered to, where changes have been made to the goods, or where parts have been exchanged or consumables have been used that do not comply with the original specifications and the customer cannot disprove an appropriately motivated assumption that one of these circumstances was the cause of the fault.
3. The customer must immediately, or at the latest one week following receipt of the goods, inform the company's Customer Service Manager in writing of any faults. Faults that are not discovered within this period after careful investigation must be communicated to the company in writing immediately after their discovery.
4. Once the customer has informed the company that the goods are faulty, the company requires that:
 - a) the faulty part or device be sent to the company for repair and subsequent re-delivery by a method of its choice, at its cost and within an appropriate period
 - b) the customer keep the faulty part ready so that a service technician of the company can be sent to the customer to carry out the repairs. The customer is obliged to hand faulty parts to the company once they have been replaced with fully functional parts during rework.
5. Any additional work time and travel costs according to the standard rates charged by the company must be paid by the customer if they demand that the rework be performed at a place of their choice and the company complies with this request.
6. The customer may withdraw from the contract if the rework fails or the company does not respond within an appropriate period provided for rework. The customer may only demand a reduction in price in the event of a minor fault. Price reductions for other reasons are excluded.
7. In urgent cases, the customer shall be entitled to repair a fault directly or with the help of suitable third parties and to claim payment of these expenses from the company. Urgent cases include risks to operating safety and the prevention of disproportionately extensive damage.
8. Liability for wear and tear is hereby excluded.
9. Only a direct customer shall have the right to institute fault claims and this right cannot be transferred.

10. Where the use of the goods leads to a violation of industrial property rights within the country, the company shall generally ensure at its own expense that the customer is entitled to continue with the use of the goods or modify the goods in a way that remedies the violation of industrial property rights or copyright and that is acceptable to the customer. Both parties shall be entitled to withdraw from the contract when this is not possible in an economically feasible way. The company shall indemnify the customer against claims by third parties concerning the violation of industrial property rights and copyright.
11. The obligations described in Point 10 shall be subject to Clause § 10 of these terms and conditions and shall only apply when:
 1. the company is free to handle all countermeasures, including legal disputes,
 2. the alleged violation of rights is only due to the design of the company's goods and not to their connection to or use with other products
 3. the customer has informed the company of the claims made regarding industrial property rights or copyright without delay
 4. the defect of title is not based on an instruction given by the customer
 5. the customer duly supports the company in its defence against the claims
 6. the customer allows the company to perform the required modifications of the goods
12. The legal product warranty regulations according to Sections 434 and following of the Civil Code shall apply in as far as Parts 1–11 above do not contain different regulations.

§ 9 Liability

1. Damage claims are hereby excluded, irrespective of the type of violation of duty, including illegal actions where these do not involve malicious intent or gross negligence.
2. The company shall be liable for any violation of major contractual obligations due to negligence, but only up to the level of the foreseeable damage. A violation of contract duties is deemed to be major where it puts the purpose of the contract at risk or where the fulfilment of duties is essential for the execution of the contract and the contract partner can therefore rely on them being fulfilled. Claims for lost profit, saved expenses for the supplier, damage claims by third parties or other direct or consequential damages may not be instituted, except in cases where a product characteristic guaranteed by the company has the explicit purpose of protecting the customer against such damage.
3. The limitations of liability and exclusions in Points 1 and 2 above shall not apply to claims that result from malicious intent by the company, liability for guaranteed properties, claims according to the Product Liability Act or death, bodily injury or damage to health.
4. Exclusions or limitations of the company's liability shall also apply to employees, workers, representatives and agents of the company.

§ 10 Statute of Limitations

Claims instituted by the customer, for whatever legal reason, shall expire after one year. This period starts with the transfer of risk from the company to the customer.

This shall not apply to claims that:

1. are due to deliberate action by the company
2. result from the Product Liability Act
3. are based on construction faults or liability for goods normally used in a construction that have caused the construction to become faulty
4. are in respect of negligent damage to the physical integrity of a person caused by the company
5. are in respect of other damage resulting from gross negligence of duties on the part of the company

§ 11 Design Changes

The company reserves the right to make design changes at any time. It shall not, however, be obliged to implement these changes in products already delivered.

§ 12 Software Use

The customer shall be provided with a non-exclusive right to use any software and documentation included in the delivery scope. Such a right shall be provided for use in specific equipment. They are not permitted to use the software on more than one system.

The customer may only copy, revise or translate the software or convert it from object code to source code within the legally permitted scope. The customer agrees not to remove manufacturers' information, in particular copyright notifications, without the prior, explicit agreement of the supplier. All other rights to the software and documentation, including its copies, shall remain with the company or the supplier of the software. No sub-licences may be issued.

§ 13 Confidentiality

The company agrees that it will not provide third parties with access to the customer's information or documentation identified as confidential without his approval and that it will protect the said confidential information or documentation against unauthorised use with the same diligence that it normally applies to its own affairs.

§ 14 Applicable Law, Place of Jurisdiction, Partial Invalidity

1. The laws of the Federal Republic of Germany shall apply to these terms and conditions and all legal relationships between the company and the customer.
2. Where the customer is a company, a legal person under public law or a public special fund, the court responsible for its place of registration shall be the only place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship.
3. In the event that one clause in these terms and conditions or one agreement within another agreement should be or become invalid, the effectiveness of the remaining clauses or agreements shall not be affected.