

SYMACON System + Service GmbH

General Terms and Conditions of Sale and Delivery

I. Scope

These General Terms and Conditions of Sale and Delivery of SYMACON System + Service GmbH (hereinafter referred to as "Supplier") shall apply to all business relations with our customers (hereinafter referred to as "Buyer"). The present General Terms and Conditions shall only apply if Buyer, upon conclusion of the contract, is a person (entrepreneur) executing his/her commercial or independent professional activities or a legal entity under public law or a special fund under public law.

II. General

1. All deliveries and services shall be subject to these General Terms and Conditions of Sale and Delivery as well as to any other separate contractual agreements which may have been entered into. Unless expressly recognized by Supplier, any deviating, conflicting or additional general terms and conditions of business of Buyer – even if known – shall not be considered part of the contract.

All settlements and agreements shall become binding for Supplier only after he has confirmed them in writing, for example, by a confirmation of order. To become valid, any deviations from these General Terms and Conditions shall require Supplier's express written confirmation.

Any complaints in regards to Supplier's order confirmation must be lodged within one (1) week after receipt.

Offers by Supplier shall be considered non-binding. Dimensions, weight and performance data as well as figures and sketches shall be understood as generally binding only, unless these data have been expressly agreed between the parties. Orders shall be deemed a binding offer to enter into a contract which Supplier may accept within a reasonable time of four (4) weeks.

2. Supplier reserves its rights of title and copyrights to samples, quotations, drawings and any similar information in physical and intangible form, including electronically. These must not be made accessible to any third party without prior written approval of Supplier. Supplier undertakes to make information and documents designated by Buyer as confidential accessible to third parties only with Buyer's consent.

III. Prices and Terms of Payment

1. Unless otherwise agreed, all prices shall be ex works, including loading at Supplier's premises, however, excluding packaging and unloading, plus value-added tax at the relevant statutory percentage on due date of the invoice.
2. Prices given as "carriage paid" shall be applicable under the condition of regular and unobstructed transport on railway lines, roads or waterways considered. If free delivery has been agreed, Buyer shall prepay the freight. Crediting shall be made after receipt of the consignment note. Follow-up charges and other shipping expenses shall be borne by Buyer, in particular dead-freight expenses, charges to be paid to the state etc., as far as Supplier is charged with such expenses.
3. Unless otherwise agreed, payment is to be made without any deduction by bank transfer to the account of Supplier, except for the freight charges specified in Clause II.2. Payment shall be made as follows: 1/3 down payment after receipt of the confirmation of order; 1/3 as soon as Buyer has been notified that the main parts are ready for dispatch; the remaining balance within one (1) month after passage of risk. Bills of exchange and cheques shall only be accepted on the basis of special agreements and only on account of payment.
4. Buyer shall only be entitled to the right to withhold payment to the extent that his counterclaims are undisputed or result from final and unappealable judicial decision of a court.
5. Buyer shall only be entitled to the right to set off claims with counterclaims resulting from other legal relationships if such counterclaims are undisputed or result from final and unappealable decision of a court.
6. In the case of default in payment Supplier shall be entitled to charge the Buyer interest and commission according to the relevant applicable bank rates for short-term loans, however, at least damages in the amount of eight (8) percent above the base interest rate (according to Art. 288 BGB, German Civil Code).

IV. Time of delivery and default in delivery

1. The time of delivery shall be set forth in the agreements entered between the contracting parties. Observance of the delivery time by Supplier presumes that all commercial and technical issues between the contracting parties are clarified and that Buyer has fulfilled all obligations due to

Supplier, such as providing all necessary official certifications or permits or making a down payment. If this is not the case, the time of delivery shall be extended accordingly. This provision shall not apply as far as Supplier is responsible for said delay.

2. Observance of the delivery time is subject to Supplier's appropriate and timely provision of his own supplies within the scope of a congruent hedging transaction. Supplier shall inform Buyer of any anticipated delays as soon as possible. Release from the obligation to observe the delivery time shall not be granted if Supplier has culpably caused his own non-delivery.
3. The delivery time shall be deemed observed if the delivery item has left the works of Supplier or its readiness for shipment has been notified prior to the expiry of said delivery time. Insofar as delivery item(s) are required to undergo acceptance by the contracting party, the agreed date of acceptance shall be decisive – except in cases of justified refusal of acceptance – or, alternatively, notification of readiness for acceptance.
4. In case that shipment or acceptance of the delivery item(s) are delayed for reasons that are due to Buyer, the cost incurred by such delay shall be billed to Buyer, beginning one month after notification of readiness for shipment or acceptance.
5. In the event that non-observance of the delivery time is due to force majeure, industrial action or other events that are beyond Supplier's control, the time of delivery shall be extended accordingly. Supplier shall inform Buyer of the beginning and the end of such event as soon as possible for him.
6. Buyer may rescind the contract without setting a time limit provided Supplier becomes finally incapable of rendering the entire performance prior to the passage of risk. Furthermore, Buyer may rescind the contract if, upon placing of the order, the performance of a part of the delivery becomes impossible and Buyer has a justified interest in refusing such partial delivery. If this is not the case, Buyer shall have to pay the portion of the contract price that applies to such partial delivery. The same shall apply in case of Supplier's inability to perform. As for the rest, Section X.2 shall be applicable. If such impossibility or inability to perform occurs during a default on acceptance or Buyer is solely or predominantly responsible for such circumstances, Buyer shall remain obliged to pay.
7. In the event that Supplier is in default and such delay causes damage to Buyer, the latter shall be entitled to claim compensation under the conditions laid down in Section X.2.

V. Passage of risk, acceptance

1. The risk shall pass to Buyer once the delivery item has left Supplier's works, even also if partial deliveries are made or Supplier has taken on additional services, e.g. freight costs or delivery and installation/erection. To the extent that the items are subject to acceptance, the latter shall be decisive for the passage of risk. It has to be performed immediately on the date of acceptance, alternatively after Supplier's notification of readiness for acceptance. Buyer shall not be entitled to reject acceptance in case of a minor/non-substantial defect.
2. In the event that shipment or acceptance are delayed or not performed due to circumstances beyond the responsibility of Supplier, the risk will pass to Buyer from the date of notification of readiness for shipment or acceptance. Supplier undertakes to take out insurance coverage for the item(s) as requested by Buyer at the latter's expense.
3. Partial deliveries shall be allowed, provided they are not inadmissible to the Buyer.

VI. Lack of adequate financial capacity

If it becomes apparent after conclusion of the contract that the claim to the purchase price is in jeopardy due to Buyer's lack of adequate financial means (e.g. due to an application to open insolvency proceedings), Supplier shall be entitled to refuse performance based on the statutory regulations and, if applicable, to rescind the contract after having set a deadline. The statutory regulations relating to the lack of necessity to set a deadline shall remain unaffected.

VII. Retention of title

1. Supplier reserves his property right(s) on all supplied products and equipment, including equipment parts, until receipt of the full payment of the invoiced amount and other ancillary costs, if any, resulting from the contract.
2. Supplier shall be entitled to insure the delivery item(s) at Buyer's expense against theft, breakage, fire, water and other damage, unless Buyer has furnished proof that he has taken out such insurance coverage.
3. Buyer shall not be entitled to either sell or pledge nor assign the delivery item(s) as security. In case of seizure, confiscation or other dispositions by third parties, Buyer shall notify Supplier immediately.

4. In the event of any violation of the contract by Buyer, in particular delayed payment, Supplier shall, subsequent to submitting a reminder, be entitled to take back the delivery item(s) and Buyer shall surrender it.
5. Based on the retention of title, Supplier may only claim possession of the delivery item(s) after Supplier has rescinded the contract.
6. The application to open insolvency proceedings shall entitle Supplier to rescind the contract and demand the immediate return of the delivery item(s).

VIII. Warranty claims

Supplier shall be liable for defects of quality and deficiencies in title under the exclusion of further claims – subject to Section X – as follows:

Defects of quality

1. At Supplier's option all parts that are found defective due to circumstances that occurred before passage of risk shall be repaired or replaced free from defects. Supplier shall be immediately informed in writing upon detection of such defects. Replaced parts shall become the property of Supplier.
2. After coordination with Supplier, Buyer shall allow for sufficient time and opportunity for Supplier to perform the repair and deliver replacement(s) as deemed necessary; otherwise Supplier shall be exempted from liability for any resulting consequences. Only in urgent cases of potential hazards to operational safety or to avert disproportionate damage of which Supplier shall be advised immediately, Buyer shall be entitled to remedy the defect on his own or have such defect remedied by third parties and claim from Supplier reimbursement of the reasonable expenses incurred.
3. Provided such a complaint is justified, Supplier shall bear the costs incurred for repair or delivery of replacement(s), including the cost of shipment. In addition, Supplier shall bear the expenses incurred for the subsequent fulfillment of the contract, in particular costs of transportation, travel expenses, labour and material costs, provided this will not cause disproportional economical charges to Supplier.
4. Within the scope of statutory regulations, Buyer shall have the right to rescind the contract if in the case of a material deficiency Supplier – taking into account exceptional cases as defined by law – let pass a reasonable respite granted to Supplier for repair or substitute delivery without taking any action. In case of minor defects, Buyer shall only be entitled to reduce the contract price. Any further claims shall be subject to the conditions laid down in Section X.2 of these Terms and Conditions.
5. No liability is accepted, in particular, on the following cases:
Unsuitable or improper use, incorrect assembly or start-up by Buyer or third parties, normal wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, unsuitable base/subsoil, chemical, electrochemical or electrical influences – unless these are the fault of Supplier.
6. When Buyer or a third party performs inappropriate repair measures, Supplier shall not be liable for any consequences resulting there from. The same shall apply to modifications of the delivery item(s) performed without prior approval by Supplier.

Deficiencies in title

7. If the use of the delivery item(s) results in a violation of industrial property rights or copyrights in Germany, Supplier shall – at his expense – essentially procure for Buyer the right to continue using the delivery item(s) or modify it in a reasonable manner for Buyer so that the violation of an industrial property right is remedied.
If this is impossible under economically reasonable conditions or within a reasonable period of time, Buyer shall be entitled to rescind the contract. Under these conditions Supplier shall also be entitled to rescind the contract. Furthermore, Supplier shall indemnify Buyer against all undisputed claims by the relevant holders of the property rights or claims resulting from final and absolute findings of a court.
8. The obligations of Supplier defined in Section VIII. 7 shall be deemed final in cases of infringement of property rights or copyrights – subject to Section X.2.

Such obligations shall exist only if

- Buyer informs Supplier immediately of any asserted violations of property rights or copyrights;
- Buyer assists Supplier in a reasonable manner in averting any asserted claims or enables Supplier to perform modification measures pursuant to Section VIII.7;
- all defense measures, including out-of-court settlements, are reserved to Supplier;
- the deficiency in title is not due to an instruction given by Buyer and
- the infringement of rights has not been caused by the fact that Buyer has carried out an unauthorized modification to the delivery item(s) or has used it in a manner not in accordance with the contract.

IX. Buyer's complaints

1. To preserve any claims for defects, Buyer shall be obliged to carefully examine the completeness and accordance of the ordered item(s) immediately after receipt. If a defect is discovered during inspection or at a later time, Supplier shall be notified immediately in writing. A notification shall be deemed to have been made immediately, if it is made within a period of two (2) weeks whereby the sending date of the notification shall be deemed sufficient to determine timely dispatch.
2. Irrespective of these duties of inspection and lodging complaints, Buyer must notify Supplier in writing of any obvious defects (including false and short delivery) within two (2) weeks after delivery. Again the sending date of the notification shall be deemed sufficient to determine timely dispatch.

X. Supplier's liability, Disclaimer of liability

1. Unless otherwise specified in these General Terms and Conditions of Sale and Delivery, Supplier shall be liable in case of any infringement of contractual or non-contractual duties in compliance with the relevant legal provisions.
2. Supplier shall be liable for any damage – on whatever legal basis – in the case of intent and gross negligence. In case of minor negligence, the Supplier shall only be liable for:
 - a) Injury to life and limb, physical injury or damage to health;
 - b) Damage resulting from any infringement of an essential contractual duty (obligation whose fulfillment is a precondition for the proper performance of the contract and that the contractual partner can normally trust and expect to be complied with). However, in this case liability shall be limited to compensation for the foreseeable damage that typically occurs.
3. The limitations of liability resulting from X.2 shall not apply if Supplier has maliciously concealed a defect. The same shall apply to Buyer's claims according to the Product Liability Act.
4. Any further claims of Buyer, e.g. for loss of production or loss of expected profit, shall be excluded.
5. Buyer may only rescind or terminate the contract in case of an infringement of duties for which Supplier is responsible.

XI. Period of limitation

1. The general period of limitation for claims arising from defects of quality and deficiencies in title shall expire twelve (12) months from the date of delivery. If acceptance has been agreed, limitation commences upon acceptance.
2. However, provided the subject matter of the contract is a building structure or a delivery item which has been used – according to its customary usage (building material) – for such structure and has caused the building's defectiveness, the statutory period of limitation shall be five (5) years from delivery. This shall not affect the statutory special regulation in case of malicious intent.
3. The periods of limitation under the German Product Liability Act shall remain unaffected.

XII. Software use

Provided software is included in the scope of delivery, Buyer shall be granted a non-exclusive right of use to the supplied software including the pertaining documentation. Such software shall be permitted for use in the defined delivery item(s). Use of such software in more than one (1) system shall not be allowed. Buyer may copy, revise, translate or convert the software from the object code into the source code only to the extent permitted by law. Buyer undertakes not to remove any manufacturer's data – in particular copyright notices – or modify such information without Supplier's express prior approval. All other rights to the software and the pertaining documentation, including copies, shall remain with Supplier or the software supplier. Granting of sublicenses is not permitted.

XIII. Applicable law, Place of jurisdiction

1. All legal relations between Supplier and Buyer shall be governed by the law of the Federal Republic of Germany, which applies to the legal relations between domestic (German) parties among each other.
2. Place of jurisdiction shall be the competent court at the seat of Supplier. However, Supplier shall be entitled to bring an action at the headquarters of Buyer.

XIV. Severability clause

If any provision of these General Terms and Conditions of Sale and Delivery becomes invalid in full or in part, this shall not affect the validity or enforceability of the remaining provisions.