



TS-Technischer Service
Porta Westfalica

**Conditions of Sale and Delivery for Foreign Trade of
TS – Technischer Service Porta Westfalica GmbH, D-32457 Porta Westfalica
No. 1/2013**

I. General, scope

(1) All quotes, deliveries and other services—including future—of TS – Technischer Service GmbH made in respect of the buyers listed in Section 2 are governed exclusively by these "Conditions of Sale and Delivery for Foreign Trade". Conflicting confirmations of the Purchaser that refer to the Purchaser's own terms and conditions are excluded. Different or alternatively worded terms and conditions of the Purchaser shall only be deemed an integral element of the contract if recognized by us in writing.

(2) Our "Conditions of Sale and Delivery for Foreign Trade" apply only in respect of buyers located abroad (outside the Federal Republic of Germany), and who are acting in relation to their business and commercial activities when the contract is signed. Our "Conditions of Sale and Delivery for Domestic Trade" apply to our buyers situated in the Federal Republic of Germany.

II. Drawings and descriptions; information requirements of the Customer

(1) We reserve all ownership rights, copyrights, and industrial property rights to all drawings, plans, samples, cost proposals and other documents or electronic data pertaining to the delivered object (including the right to file for such rights). Said documents may only be used for the intended purpose and may not be transferred to third parties without our consent.

(2) Before concluding the contract, the Customer must inform us if the delivered object

- Is to be used for any purposes other than its intended use
- Will be used in unusual conditions or in conditions that place higher demands on the object or which represent an increased risk of personal injury, an increased hazard, or could damage the environment
- Is intended for processing unusual materials

III. Contract conclusion, contents

(1) The specifications and information given in the product catalogs and price lists shall be deemed legally binding elements of the contract only if the contract makes express reference to these.

(2) The object of the contract will be as expressly defined in the product description set out in our written offer or our written order confirmation. Subsidiary agreements, verbal declarations by employees or representatives and changes to confirmed orders (including changes to delivered objects) require our written or electronically communicated confirmation in order to become effective.

(3) In the case of delivered objects that are manufactured according to customer requirements, and which are not products mass produced by us (special designs), the corresponding documentation may differ from our standard documentation as used throughout the TS – Technischer Service Porta Westfalica. In particular, the scope, form and function of the documentation may be different or less extensive.

IV. Changes to the delivered object

(1) We reserve the right to make changes to the design and material of the delivered object as described in the contract providing that such changes do not significantly or disadvantageously impair the normal use of the delivered object or the use as set out in the contract, and providing that the Purchaser would reasonably be expected to accept such changes.

(2) Change requests of the Purchaser will be taken into account following the conclusion of a corresponding agreement that sets out the effects on the price and delivery deadlines.



V. Prices, payment

(1) Unless otherwise agreed separately, all prices are listed ex-works (EXW) not including packaging, shipping, insurance, or duties and other costs involved with delivery.

(2) Payment must be made in the currency specified in our quote or our order confirmation.

(3) All payments are to be paid to the account specified on our invoice in full and without any deductions or charges. Regardless of the means of payment, the payment will only be deemed accepted when the full amount on the invoice has been credited irrevocably to our account so that we have access to it (receipt of payment). The Purchaser is liable for any additional costs incurred through the choice of a particular means of payment.

(4) Should the Purchaser fail to make payment within the agreed payment period, we can demand interest of 5% p. a. above the main refinancing rate of the European Central Bank without prejudice to any other legal remedies.

We reserve the right to submit proof of more substantial damages.

(5) Offsetting or settlement or the exercising of a right of retention shall only be admissible following legal claims on the part of the Purchaser that are recognized and unchallenged by us, are ready for a decision, and may be legally enforced.

VI. Delivery date, creditworthiness, acceptance of delivered object

(1) The delivery date will be as decided by the contractual parties. Compliance with the delivery date requires the Purchaser to provide all required documents in good time, and to fully answer all technical questions and to explain in full any details regarding the requested design.

(2) The delivery date shall be deemed met if, before it has elapsed, the transfer of risk as defined by Section VII (2) has passed to the Purchaser.

(3) The delivery date shall be extended accordingly if we are unable to meet our delivery obligations, or unable to meet our delivery obligations on time, owing to circumstances or extenuating factors beyond our control and which were not reasonably foreseeable at the time the contract was concluded. Factors that are deemed beyond our control include in particular failure by our suppliers to deliver parts properly or in a timely manner. We will inform the Purchaser as promptly as possible when such extenuating factors have begun and ended. If such delays last longer or will last longer than three months, both we and the Purchaser are entitled to dissolve the contract.

(4) If after the conclusion of the contract we become aware of circumstances that lead us to have reasonable doubts about the Purchaser's creditworthiness or ability to pay and there is a risk that payments that are due to us under the contract will not be made, we have the right to cease our services until such time that the payment is made in accordance with the contract or security is provided for the payment, and the Purchaser has discharged any other claims arising from the business relationship and which are economically associated with the contract.

(5) Unless otherwise agreed, the Purchaser is obliged to take delivery of the delivered object within ten days following receipt of notification from us that the delivered object is ready in our plant. If the acceptance deadline is exceeded by more than three days, this shall constitute a fundamental breach of contract and entitles us, without prejudice to other legal remedies, to arrange for the shipment of the delivered object to the Purchaser, and to charge the Purchaser for this delivery and for the associated formalities. Non-acceptance of the delivered object does not absolve the Purchaser of its obligation to pay the purchase price.



(6) If the Purchaser is delayed in the acceptance of the delivered objects or in arrears with payment, we are entitled to withdraw from the contract following the lapse of an appropriate grace period required to be granted by us by law and/or to request damages due to non-fulfillment. On enforcement of claims for damages owing to non-fulfillment, we are entitled—without the need for proof—to demand compensation of

- 20% of the purchase price providing the delivered object is a standard or mass-production product, or
- 100% of the purchase price if the delivered object is a custom-made product according to specific customer requirements, and where expenses were incurred by us in the course of manufacturing the object based on a requested delivery date. The contractual parties reserve the right to prove greater or significantly lower actual damages. This is also without prejudice to regulations stipulated by law that apply for ascertaining damages if the contract has already been completely fulfilled by us. Moreover, we are also entitled to charge for incurring additional work, in particular warehousing costs, in the event the customer delays acceptance.

VII. Delivery, shipment, and transfer of risk

(1) The place of delivery is determined in accordance with the delivery clauses, drawn up under the Incoterms 2010 and agreed between us and the Purchaser. Unless otherwise agreed by a separate delivery clause, delivery shall always be EXW.

(2) Unless otherwise agreed, the transfer of risk passes to the Purchaser as soon as the delivered object has been presented to the Purchaser for use. If the delivered object is transported to the Purchaser, the transfer of risk passes to the Purchaser as soon as the delivered object has been accepted by the first freight forwarder at the latest. If the transportation of the delivered object is delayed owing to circumstances for which we are not liable, the transfer of risk shall be deemed to have passed to the Purchaser as soon as the Purchaser has been informed that the delivered object is ready for collection.

(3) We will make all reasonable efforts to procure the necessary export license. We offer no guarantee that the export license will be granted. We are, however, unaware of any circumstances that would prevent an export license being issued. The Purchaser is responsible for acquiring an import license where required.

(4) If requested by the Purchaser, all shipments will be insured at the Purchaser's cost following transfer of risk. In the event of damage, we will successively transfer claims from the insurance to the Purchaser in return for performance of the contractual services of the Purchaser (including compensation of the insurance premium).

VIII. Preparation of assembly work, etc.

If our agreed services include the installation, assembly and/or commissioning of the delivered object or similar work, the Customer agrees to ensure all necessary preparations have been made at the installation location in order to allow such work to be performed. In particular, the Customer agrees to provide the necessary electrical connections, compressed air facilities, and sufficient lighting at the installation location. Furthermore, dry and lockable rooms must be provided to store the tools of the assembly engineers.

IX. Acceptance, acceptance checks

(1) The Parties are free to agree that a joint acceptance test is performed in order to ensure that the contract has been fulfilled correctly, particularly where assembly work is included.

(2) If no acceptance date has been agreed, we will inform the Purchaser of the date of the acceptance test.

(3) The Purchaser shall bear the costs for the acceptance testing (including the costs for test materials and supplies). We shall bear the costs for our personnel.

(4) A written record of the acceptance test will be created, which is to be signed by both parties. Any defects of the delivered object must be recorded.

(5) The delivered object shall be deemed accepted if



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- The delivered object has no or very minor defects, or
- The acceptance test could not be carried out owing to the fault of the Purchaser, or

- The Purchaser has commissioned the delivered object for his own commercial purposes

(6) If during the acceptance test, the delivered object is shown to be not as described in the contract, we are authorized and obliged to remedy the discrepancy immediately; in all other respects, the provisions as defined by Section X apply.

X. Non-compliant delivered object or documents, notice of defects, warranty

(1) If no acceptance test was performed, the Purchaser must notify us in writing immediately, but no later than one week following acceptance of the delivered object, of any aspects of the delivered object or documentation that are not as described in the contract at the point of acceptance, and must indicate the manner in which the delivered object or documentation differs from the contract. Furthermore, the Purchaser must examine the delivered object and/or documents immediately, but no later than one week following acceptance, including in cases where a joint acceptance test was performed. The Purchaser loses the right to claim a lack of conformity with the contract if he does not notify us for whatever reason in writing within one week of the time in which the defect was discovered or should have been discovered, and does not inform us of the precise defect. The written notification of defects from the Purchaser must have been sent within one week of acceptance of the delivered object or of the Purchaser noticing the lack of conformity with the description in the contract; the notification of defects must also have been received by us on time. We are not entitled to call on the provisions of this clause only if we were aware that some aspects of the delivered object did not comply with the contract, and did not disclose this to the Purchaser.

(2) If it is not possible to identify any aspects of the delivered object that do not comply with the contract following a notification of defects from the Purchaser, the Purchaser must reimburse us all costs that were incurred as a result of checking the delivered object.

(3) If the delivered object or documentation is found to be contrary to the description in the contract, we are entitled to remedy this situation or to affect a replacement delivery after the agreed delivery period. In order for a replacement delivery to be necessary, the delivered object must show a significant discrepancy from the description in the contract. Unless otherwise specified in the contract or during the conclusion of the contract—in particular the preceding negotiations—no breach of the contract will be deemed to have occurred if the delivered object does not meet the technical or other standards applicable in the destination country (country of the Purchaser) or if the delivered object is not suitable for specific purposes.

(4) If the defect of the delivered object or documentation is not remedied by way of improvement or replacement delivery within an appropriate period, the Purchaser may claim a reduced value in the delivered object and demand a lower purchase price.

(5) If the delivered object or documentation is revealed to be contrary to the description in the contract, the Purchaser has no right to terminate the contract rather than reduce the purchase price unless the defect represents a serious breach of the contract. No serious breach of the contract will be deemed to have occurred if we resolve the defect within an appropriate grace period as set by the Purchaser and which must be at least six weeks.

(6) Clause 3 notwithstanding, the right of the Purchaser to assert warranty claims expires 12 months following acceptance of the delivered object by the Purchaser. If an acceptance test has been agreed, the limitation period will begin at the end of the day on which the acceptance test was performed—or should have been performed if the acceptance test was not performed through the fault of the Purchaser—but no later than the end of the day on which the Purchaser commissions the delivered object for its own commercial purposes. Regardless of any other circumstances, the limitation period will always begin as soon as the delivered object has reached 2500 operating hours.

XI. Liability, compensation



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(1) Our liability for compensation, in particular consequential loss due to late delivery or a lack of conformity of the goods or documents to the description in the contract, is excluded, unless it results from intention or gross negligence or if we have willfully neglected to inform the Purchaser of any defect.

(2) Our liability in accordance with the applicable and unalterable legal product liability regulations is unaffected.

XII. Reservation of title

(1) The delivered object remains our property until full payment of the purchase price as set out in Section V (3), providing such reservation of title is permissible under the applicable law.

(2) The Purchaser agrees to take all necessary measures that uphold this reservation of title or any equivalent security interest recognized in the destination country (country of the Purchaser). If the Purchaser does not meet this obligation, this will represent a serious breach of contract.

(3) The agreements on the reservation of title are without prejudice to the provisions governing the transfer of risk as defined by Section VII (2).

XIII. Place of jurisdiction, applicable law

(1) All disputes arising out of this contract will be heard solely by the courts based in the municipality of our head offices in Porta Westfalica, D – 32457 Germany. Contrary to Clause 1, however, we are also entitled to petition the Purchaser in courts based in the location of the Purchaser.

(2) This contract is subject to the United Nations Convention on the International Sale of Goods (CISG) of April 11, 1980. Legal matters that are not governed by this agreement or which cannot be conclusively resolved based on its provisions are subject to Swiss material law.

XIV. Final provisions

(1) The invalidity, ineffectiveness or unfeasibility of an individual provision in these Conditions of Sale and Delivery or any contract based on these Conditions of Sale and Delivery shall not affect the validity of the other provisions or agreements. In the event of an ineffective or unfeasible provision or agreement, the contractual partners agree to replace this provision or agreement with an effective and feasible provision or agreement that as far as is permissible reflects the economic purpose of the ineffective or unfeasible provision or agreement.

(2) The contractual partners are mutually obliged to take all reasonable measures necessary to achieve the intended purpose of this contract, and to refrain from any activities that prevent the purpose of this contract from being achieved or fulfilled.

TS-Technischer Service Porta Westfalica GmbH