

These terms and conditions of delivery also apply to the following companies and divisions of Marx Gruppe GmbH & Co. KG:

Marx Automation GmbH
Marx Wassertechnik GmbH

For use with

1. Entrepreneurs (Section 14 German Civil Code [BGB]) and business people if the contract is part of commercial business operations.
2. Legal persons under public law and special funds under public law.

I. General

1. The customer's terms and conditions (terms and conditions of sale and purchase, etc.) shall only apply insofar as the supplier has explicitly agreed to them. They shall not become the object of a contract upon an order being accepted.
2. Individual contractual agreements reached in writing between the parties shall take precedence over these terms and conditions of delivery.
3. The contract shall come into force upon the order being confirmed in writing by the supplier. The supplier's written order confirmation shall be authoritative regarding the scope of delivery and services. Collateral agreements and amendments are subject to written confirmation from the supplier.
4. The documents belonging to the quotation such as illustrations, drafts, weights and dimensions are only close approximations insofar as they are not explicitly designated as being binding. The supplier reserves proprietary rights and copyrights to drafts and other documents, including in electronic form; these are to be handled confidentially and may not be made accessible to third parties; insofar as the supplier is not contracted, they are to be returned without undue delay.
5. If delivery items are ordered the construction and composition characteristics of which are specified by the customer, the customer shall be responsible for ensuring that their construction or composition does not infringe third-party intellectual property rights. The customer shall indemnify the supplier against any such claims.

II. Price and payment

1. Prices apply ex works excluding packaging plus the statutory value added tax applicable to the contract in question, with duty unpaid and untaxed in the case of international transactions.
2. Payments are to be made in full without charges from the supplier unless stipulated otherwise in the supplier's quotation:

40% upon order confirmation

50% upon delivery

10% upon acceptance, at the latest 60 days after delivery

3. Should the customer postpone delivery, payment shall nevertheless fall due upon notification of the items' readiness and upon an invoice being issued by the supplier.

4. In the event of a suspension on the part of the customer, the sums for the services rendered by the supplier thus far shall fall due 4 weeks after the suspension, insofar as this has not been lifted. This shall not affect claims for damages on the part of the supplier.

5. Set-off by the customer shall only be possible in the event of undisputed or legally effective claims.

6. In the event of payment in arrears, the customer shall pay interest on arrears of the statutory amount. Insofar as the supplier produces evidence of greater damages caused by delayed performance, these shall be compensated.

III. Retention of title

1. The delivered goods shall remain the property of the supplier until all of the supplier's claims pursuant to the contract in question have been satisfied. The goods may not be pledged or assigned as a security prior to full payment. The customer must notify the supplier without undue delay of the seizure, confiscation or any other disposition of the goods or interference by third parties.

2. Title shall, if applicable, extend to new items created due to the processing of the goods subject to retention of title. The customer shall manufacture the new item for the supplier under exclusion of its own acquisition of title and shall store this for the supplier free of charge. No claims on the part of the customer against the supplier shall arise from this.

3. In the event that the goods subject to retention of title are processed with the goods of other suppliers whose proprietary rights likewise continue with the new item, the supplier shall acquire co-ownership of the new item together with the other suppliers – under exclusion of the customer's acquisition of co-ownership – at its full value (including value added) as follows:

a) The co-ownership share shall equal the ratio of the invoice value of the supplier's goods subject to retention of title to the invoice value of all the goods subject to retention of title that were jointly processed.

b) If there is a residual share not initially covered by retention of title, the ownership share shall be increased by this residual share. If other suppliers have likewise extended their ownership shares to include this residual share, only the share shall be due to the supplier which is determined on the basis of the ratio of the invoice value of the supplier's goods subject to retention of title (including any work performed or services rendered) to the invoice values of the other suppliers.

4. The customer already relinquishes to the supplier its claims regarding the sale of the goods subject to retention of title in current and future deliveries together with all ancillary rights in the amount of the supplier's ownership share. In the case of processing in the context of a service contract, the claim for compensation for work shall be assigned to the supplier in the amount of the proportional amount of its invoice for the processed goods subject to retention of title. The supplier shall accept this assignment.

5. Insofar as the customer performs its duties regarding its business relations with the supplier properly, it may have at its disposal the goods in the supplier's possession in the ordinary course of business and may itself collect the claims assigned to the supplier.

6. In the event of payment in arrears of more than 30 days or a deterioration in the customer's assets, the supplier is entitled to disclose the assignment of proceeds without setting any further deadline and to collect the assigned claims. The customer is to surrender to the supplier the information and documents required for this without undue delay.

7. If the value of the securities granted to the supplier exceeds the sum of the secured claims by more than 20%, the supplier shall, at the customer's request, release a corresponding proportion of the securities of its choosing.

8. In the event of conduct on the part of the customer which is in violation of the contract, in particular payment in arrears, the supplier is entitled to reclaim the delivered item once notice has been given and the customer is obliged to surrender it.

IV. Delivery time

1. The delivery time shall be determined by the agreements reached by the contracting parties. Observation of the agreed delivery deadlines is subject to the timely receipt of all the documents to be provided by the customer, including the necessary authorisations and approvals, in particular plans and samples, as well as the customer's compliance with the agreed payment conditions and any other obligations. If these requirements are not met, the deadlines shall be extended accordingly. This shall not apply if the delay is attributable to the supplier.

2. Observation of the delivery deadline is subject to correct and timely self-delivery. The supplier shall notify the customer of any looming delays as soon as possible.

3. The delivery deadline shall be extended accordingly in the event of measures in the context of industrial action, in particular strikes and lockouts, and if unforeseeable hindrances arise which are outside the control of the supplier insofar as it can be proven that such hindrances have a considerable influence on the completion or delivery of the delivery item, such as an important delivery part being defective through no fault of the supplier. This shall equally apply if the circumstances

arise for subsuppliers or in the course of an existing delay. The supplier shall notify the customer of the beginning and end of such hindrances without undue delay.

4. The delivery deadline shall have been observed if the delivery item has left the factory by expiry of the deadline or if notification of its readiness for dispatch has been given. Insofar as there is to be a preliminary acceptance, the preliminary acceptance date or alternatively the notification of readiness for preliminary acceptance shall be authoritative unless there is justification for the refusal of preliminary acceptance.

5. If dispatch or preliminary acceptance is delayed at the request of or through the fault of the customer, the customer shall be invoiced for the storage costs incurred per month for storage at the supplier's factory starting one month after notification of dispatch or readiness for preliminary acceptance, in the amount of at least 0.5% of the delivery value of the part in storage. The supplier is, however, entitled, upon an appropriate period of grace having been set and then expiring without result, to have the delivery item otherwise at its disposal and to make a delivery to the customer according to an appropriately extended deadline or to revoke the contract.

6. The customer may revoke the contract if full performance becomes definitively impossible for the supplier prior to the transfer of risk. Further, the customer may revoke the contract if part delivery of an order becomes impossible and the customer has no legitimate interest in said part delivery. If this is not the case, the customer shall pay the contractual price for the part delivery. The same shall apply to inability to perform on the part of the supplier. If delivery impossibility or inability to perform occurs during the delay in acceptance or if the customer is solely or primarily responsible for this, the customer shall be bound to provide consideration.

7. If the customer can provide credible evidence that it has incurred a loss due to a delay for which the supplier itself is culpable, it is, under exclusion of claims above and beyond those governed by these conditions, entitled to demand 0.5% of the value of the part of the full delivery which cannot be used in time or in accordance with the contract as a result of the delay, but no more than 5% in total, as delay compensation for each full week of delay. If the customer sets the supplier an appropriate performance deadline following the performance due date – taking into account the statutory exceptions – and if this deadline is not observed, the customer is entitled to revocation within the context of the legal provisions. The supplier shall be allowed to prove that the customer incurred no loss or a lesser loss.

V. Transfer of risk

1. In the case of carriage-paid delivery or if the supplier has assumed additional obligations such as delivery, installation, etc., irrespective of pricing, risk shall be

transferred to the customer at the latest upon the delivery parts being dispatched or collected. At the customer's request and expense, deliveries shall be insured against theft, breakage, damage in transit, fire and water damage and any other insurable risks. The supplier may make insurance cover conditional on prepayment of the costs by the customer.

2. If dispatch, delivery, the commencement or execution of installation or assembly, taking delivery at the customer's premises or trial operation is delayed due to circumstances for which the customer is responsible or if the customer is delayed in its acceptance of the goods for any other reason, the risk shall be transferred to the customer. At the customer's request and expense, deliveries shall be insured against theft, breakage, damage in transit, fire and water damage and any other insurable risks. The supplier may make insurance cover conditional on prepayment of the costs by the customer.

3. Insofar as this is not already the case, the risk shall be transferred to the customer at the latest at the time of acceptance.

VI. Acceptance

1. The delivery item is to be accepted by the customer even if insignificant defects are evident, notwithstanding the rights pursuant to Section VII.

2. Part deliveries shall be permissible insofar as these are reasonable for the customer.

VII. Warranty

1. The supplier shall be liable for defects as follows under exclusion of further claims:

a) Defects which arise for which claims are to be asserted during the supplier's liability/warranty are to be reported to the supplier in writing without undue delay upon arising. If the customer fails to report such defects, the supplier's liability shall be waived.

b) The supplier shall remedy defects attributable to a circumstance prior to the transfer of risk at its own discretion or shall replace the defective parts.

c) The customer shall afford the supplier the appropriate time and opportunity to perform all the reworking or replacement deliveries which appear necessary to the supplier. The supplier shall otherwise be exempt from liability, including regarding the consequences. Only in urgent cases of operational safety being jeopardised or to protect against disproportionately large losses does the customer have the right to remedy the defect itself or have it remedied by a third party and to demand the reimbursement of the necessary expenses from the supplier.

d) Of the costs directly incurred for reworking or for replacement delivery, in the event of a justified

complaint the supplier shall bear the costs of the replacement piece including the dispatch costs. The supplier shall additionally bear the costs of removal and installation and the costs of any necessary provision of installers and auxiliary staff including travel expenses insofar as this does not result in a disproportionate burden for the supplier.

e) Within the context of the legal provisions, the customer has the right to revoke the contract if – taking into account the statutory exceptions – the supplier allows an appropriate deadline which it is set for reworking or for replacement delivery as a result of material defects to pass without success. If the defect is simply negligible, the customer is merely entitled to a reduction in the purchase price.

f) Additional rights on the part of the customer due to a defect and the resulting consequential losses are excluded. This shall not apply in the event of intent, gross negligence on the part of the owner, the governing bodies or the managerial employees, culpable injury to life, body or health if the supplier fraudulently conceals a defect or has accepted a guarantee for the quality of the work, and defects in the delivery item insofar as there is liability for personal injury and damage to property regarding objects used privately pursuant to Germany's Product Liability Act (ProdHaftG). In the event of the culpable violation of material contractual obligations, the supplier shall additionally be liable for the gross negligence of non-managerial employees as well as for slight negligence, the latter being limited to reasonably foreseeable losses which are typical for the contract.

g) The supplier shall not accept liability

– for damage caused due to the unsuitable or inappropriate use, storage, interim storage, faulty installation or operation by the customer or third parties, natural wear and tear, incorrect or negligent handling, unsuitable equipment, deficient construction work, unsuitable building ground or chemical, electrochemical or electrical influences insofar as there is no culpability on the part of the supplier.

– for damage and consequential damage caused by modifications or maintenance work performed by the customer or a third party without the supplier's approval.

2. The warranty begins with the transfer of risk (cf. Section V). Formal acceptance is not a prerequisite for commencement of the warranty.

3. All of the customer's claims shall be subject to a limitation period of 24 months irrespective of their legal basis. The statutory deadlines shall apply to claims for damages pursuant to Item 1 f. The warranty period shall be stayed while a defect is being remedied. There shall be no recommencement of the limitation period.

4. The customer shall have the right to retain payments only to a degree which is commensurate to the defects which arose.

5. If use of the delivery item results in the violation of industrial property rights or copyrights in Germany, the supplier shall as a rule obtain for the customer the right to further use at its own expense or shall modify the delivery item in a manner which is reasonable for the customer such that there is no longer any violation of industrial property rights. If this is not possible subject to economically appropriate conditions or within an appropriate time frame, the customer shall be entitled to revoke the contract. The supplier shall likewise have the right to revoke the contract if the aforementioned conditions apply. Further, the supplier shall indemnify the customer against undisputed or legally effective claims from the affected holders of industrial property rights.

6. The supplier's obligations as stipulated in Item 5 of Section VII shall be conclusive and shall exist only if

– the customer notifies the supplier without undue delay of claims asserted regarding violations of industrial property rights or copyrights.

– the customer provides the supplier with an appropriate degree of assistance in protecting itself against the claims asserted or facilitates the supplier executing the modification measures as per Item 5.

– the right is reserved for the supplier to effect all protective measures including out-of-court settlement.

– the defect of title is not based on an instruction of the customer.

– the violation of the law was not caused by the customer modifying the delivery item on its own authority or using it in a manner not compliant with the contract.

VIII. Withdrawal of the customer

1. The customer may withdraw from the contract in the cases regulated by law insofar as this is possible in spite of the warranty limitation stipulated in Section VII.

2. In the event of a permissible withdrawal of the customer due to a circumstance for which the supplier is responsible, the customer may demand compensation. This shall be limited to 10% of the value of the part of the delivery which could not be executed because of the withdrawal. Further claims on the part of the customer are excluded. The supplier shall still be allowed to prove that no loss or a lesser loss was incurred.

IX. Supplier's right to withdrawal and to contract adjustment

1. In the event of foreseeable events within the meaning of Section IV, insofar as they significantly change the economic importance or the content of the service or have a significant effect on the supplier's business, and in the event of the impossibility of executing the

contract in the intended form subsequently coming to light, the contract shall be amended accordingly in consultation with the customer. If this is not economically reasonable, the supplier shall have the right to withdraw from the agreement either wholly or in part.

2. The customer shall not be entitled to claims for damages in the instance of such a withdrawal. If the supplier wishes to exercise its right to withdraw, it must notify the customer hereof without undue delay upon learning of the significance of the event, including if an extension of the delivery deadline was initially agreed with the customer.

3. A request to open insolvency proceedings regarding the customer's assets entitles the supplier to withdraw from the agreement and to demand the immediate surrender of the delivery item.

X. Other claims for damages

1. Other claims for damages lodged against the supplier or its vicarious agents by the customer are excluded irrespective of their legal basis insofar as no compelling legal liability exists.

2. Section VII shall accordingly apply to claims made by the customer for reworking, replacement delivery or compensation which came about due to suggestions or advice prior to or following conclusion of the contract or due to the violation of contractual accessory obligations.

XI. Software usage

1. Insofar as the scope of supply includes software, the customer shall be granted the non-exclusive right to use the software supplied including its documentation. It shall be provided for use on the designated delivery item. Use of the software on more than one system is not permitted.

2. The customer may only duplicate, revise or translate the software or convert it from object code into source code to the extent permitted by law (Section 69 a ff. German Copyright Act [UrhG]). The customer undertakes not to remove or modify the manufacturer's specifications – in particular copyright notices – without the prior explicit approval of the supplier.

3. All other rights pertaining to the software and its documentation, including copies thereof, shall remain with the supplier or with the software supplier. The granting of sublicences is not permitted.

XII. Data protection

The client's personal data which is communicated or of which knowledge is otherwise gained in the course of the contractual relationship shall be stored and processed electronically by the contractor, taking into account the purpose of the contract and to satisfy the business purposes. Personal data can, in particular, include: company name, business address and telephone

number, (company) mobile telephone number, fax number, email address.

XIII. Place of jurisdiction and applicable law

1. The place of jurisdiction for all disputes arising from the contractual relationship shall be Düren. The supplier is also entitled to assert claims at the customer's place of business.

2. The contractual relationship is subject to German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980.