

General Terms and Conditions of Sale (as of April 2018)

IEM FörderTechnik GmbH

Divisions: IEM ConveyingSystems

ROS SteelTechnology, ROS ConveyorRollers

To apply vis-à-vis:

1. a person who, when concluding the contract, is acting in the exercise of their commercial or independent professional activity (contractor)
2. legal persons under public law or a special fund under public law.

1. General

1.1 All deliveries, services and offers of the Supplier are made exclusively on the basis of these General Terms and Conditions of Delivery. These terms and conditions are an integral part of all contracts which the Supplier concludes with their contractual partners (hereinafter also referred to as the "Purchaser") in relation to the deliveries or services offered by the Supplier. They also apply to all future deliveries, services or offers to the Purchaser, even if they are not separately agreed again.

1.2 Deviating terms and conditions of the Purchaser or third parties do not apply, even if the Supplier does not separately object to the applicability of such terms and conditions in individual cases. Even if the Supplier refers to a letter containing, or referring to, terms and conditions of the Purchaser or a third party, this does not constitute consent to the validity of such terms and conditions.

In the absence of an agreement to the contrary, a contract is concluded solely upon the written order confirmation of the Supplier.

1.3 The Supplier retains the right to samples, cost estimates, drawings and such like, information of a corporeal and incorporeal nature – also in electronic form – property rights and copyrights; the aforementioned must not be made accessible to third parties. The Supplier undertakes to make information and documents designated by the Purchaser as confidential available to third parties only with the Purchaser's consent.

2. Price and payment

2.1 The prices apply to the services and scope of delivery listed in the order confirmations or contracts. Additional or special services will be charged separately. Prices are stated in euros ex works including loading at the factory plus packaging, unloading, statutory value added tax, customs duty for export deliveries as well as fees and other public charges.

2.2 In the absence of an agreement to the contrary/an individual agreement, payment is to be made, without any deduction, on account to the Supplier, namely:

- 1/3 down payment following receipt of the order confirmation,
- 1/3 as soon as the Purchaser has been informed that the main parts are ready for dispatch,

the remaining amount within one month of the transfer of risk.

2.3 Offsetting against counterclaims of the Purchaser or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been recognised by a declaratory judgement.

3. Delivery and delivery time

3.1 Deliveries are made ex works.

3.2 Deadlines and dates for deliveries and services stated by the Supplier are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed. Insofar as dispatch has been agreed, delivery deadlines and delivery dates refer to the time of handover to the forwarder, carrier or any other third party commissioned with the transport.

3.3 The Supplier may - notwithstanding their rights arising from default on the part of the Purchaser - seek an extension of delivery dates and delivery deadlines and a postponement of delivery dates and delivery deadlines from the Purchaser. Such an extension or postponement is to reflect the period during which the Purchaser fails to fulfil their contractual obligations vis-à-vis the Supplier.

3.4 The Supplier is not liable for the impossibility of delivery or for delays in delivery insofar as such an impossibility or delay are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs, lack of labour, energy or raw materials, difficulties in obtaining the requisite official permits, official measures or the non-delivery, incorrect or delayed delivery by suppliers) for which the Supplier is not responsible. Insofar as such events render the delivery or service considerably more difficult or impossible for the Supplier and the impediment is not only of a temporary nature, the Purchaser is thus entitled to withdraw from the contract. With regard to impediments of a temporary nature, the delivery and performance deadlines are to be extended or the delivery and performance dates are to be postponed for the period of the impediment plus a reasonable start-up period. Insofar as acceptance of the delivery or service cannot reasonably be expected of the Purchaser as a result of the delay, the Purchaser may then withdraw from the contract subject to providing the Supplier with immediate written notification thereof.

3.5 The Supplier is only entitled to make partial deliveries if:

- the partial delivery can be used by the Purchaser within the scope of the intended contractual purpose
- the delivery of the remaining ordered goods is ensured and
- the Purchaser does not incur any significant additional expenses or costs (unless the Supplier agrees to bear such costs)

3.6 Insofar as the Supplier is in default with a delivery or service or insofar as a delivery or service becomes impossible for the Supplier, irrespective of the reason, the liability of the Supplier is limited to damages in accordance with sections 7.2 – 7.4 of these General Terms and Conditions of Sale.

4. Transfer of risk, acceptance

4.1 Risk passes to the Purchaser at the point at which the delivery item has left the factory, even if partial deliveries are made or the Supplier has assumed responsibility for other services, such as shipping costs or delivery and installation. Insofar as acceptance is required, such acceptance is decisive for the transfer of risk. It is to be carried out without undue delay on the acceptance date. Alternatively, it can be carried out after the Supplier's notification of readiness for acceptance. The Purchaser is not permitted to refuse acceptance in the event of a minor defect.

4.2 Insofar as dispatch or acceptance is delayed or does not take place due to circumstances for which the Supplier is not responsible, risk passes to the Purchaser on the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out the insurance policies requested by the Purchaser at the Purchaser's expense.

5. Retention of title

5.1 The Supplier retains title to the delivery item until receipt of all payments – including any additional services owed – from the delivery contract.

5.2 The Supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the Purchaser's expense, unless the Purchaser has demonstrably taken out such insurance himself.

5.3 The Purchaser is not permitted to sell, pledge or assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, the Purchaser is to inform the Supplier immediately.

5.4 If the Purchaser acts in breach of contract, particularly in the event of default in payment, the Supplier is thus entitled to take back the delivery item following a reminder and the Purchaser undertakes to surrender the aforementioned delivery item.

5.5 Due to the retention of title, the Supplier is only permitted to demand the return of the delivery item if the Supplier has withdrawn from the contract.

5.6 The application to open insolvency proceedings entitles the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.

6. Claims for defects

With regard to material defects and defects of title in relation to the delivery, the Supplier is only liable in the event of immediate notification of the defect (within three days of the defect becoming known) to the exclusion of further claims - subject to Section VII - as follows:

Material defects

6.1 The warranty period is 1 year from delivery or, insofar as acceptance is required, 1 year from acceptance. In the event of unjustified refusal or delay of acceptance by the Purchaser, the prescription period commences upon expiry of the set deadline for acceptance of the acceptable delivery.

6.2 The delivered goods are to be carefully inspected immediately after delivery to the Purchaser or immediately after delivery to the third party designated by the Purchaser. With regard to obvious defects or other defects which would have been detectable during an immediate, careful inspection, the delivered goods are deemed to have been approved by the Purchaser if the Supplier does not receive a written notification of defects within 7 working days of delivery. With regard to other defects, the delivery items are deemed to have been approved by the Purchaser if the notice of defects is not received by the Supplier within 7 working days of the time at which the defect became apparent. However, if the defect was already apparent to the Purchaser at an earlier time during normal use, this earlier time is decisive for the beginning of the notice period. At the request of the Purchaser, a defective delivery item is to be returned, carriage paid, to the Supplier. In the event of a justified notification of defects, the Supplier reimburses the costs associated with the most favourable dispatch route; this does not apply insofar as the costs increase because the delivery item is located at a location other than the location of the intended use.

- 6.3** In the event of material defects in relation to the delivered goods, the Supplier is initially obliged and entitled to either remedy the defect or make a replacement delivery at their discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of rectification or replacement delivery, the Purchaser may withdraw from the contract or reduce the purchase price accordingly.
- 6.4** Insofar as a defect is due to the fault of the Supplier, the Purchaser may claim damages subject to the conditions set forth in Section 7.
- 6.5** With regard to defects in components of other manufacturers which the Supplier cannot remedy for licensing or factual reasons, the Supplier is, at their discretion, to assert their warranty claims against the manufacturer or suppliers on behalf of the Purchaser or assign such claims to the Purchaser. Warranty claims against the Supplier in relation to such defects only exist subject to the other conditions and in accordance with these terms and conditions of delivery if judicial enforcement of the aforementioned claims against the manufacturer and suppliers was unsuccessful or is futile, for example due to insolvency. For the duration of the legal dispute, the prescription period for the relevant warranty claims of the Purchaser against the Supplier is suspended.
- 6.6** The warranty lapses if the Purchaser modifies the delivery item or has it modified by third parties without the Supplier's consent and remedying of the defect becomes impossible or unreasonably difficult as a result. In any case, the Purchaser is to bear the additional costs of remedying the defect resulting from the change. Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, inadequate construction work, unsuitable foundations, chemical, electrochemical or electrical influences, insofar as the Supplier is not responsible for the aforementioned, render liability on the part of the Supplier void.
- Defects of title**
- 6.7** Insofar as use of the delivery item leads to a breach of industrial property rights or copyrights in Germany, the Supplier is, in principle, to procure the right to continued use of the delivery item for the Purchaser at the Supplier's own expense or modify the delivery item, in a manner reasonable to the Purchaser, in such a way that the breach of the property right no longer exists.
If this is not possible on account of economically reasonable conditions or within a reasonable period of time, the Purchaser is thus entitled to withdraw from the contract. Subject to the aforementioned conditions, the Supplier is also entitled to withdraw from the contract.
Furthermore, the Supplier is to indemnify the Purchaser against undisputed or legally established claims on the part of the relevant property right holders.
- 6.8** The obligations of the Supplier set forth in section 6.7 are final, subject to section 7, in the event of a breach of a property right or copyright.
They only exist if
- the Purchaser informs the Supplier immediately of any asserted breaches of property rights or copyright,
 - the Purchaser assists the Supplier, to an appropriate extent, in defending the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section 7.7,
 - all defensive measures, including out-of-court settlements, are reserved to the Supplier,
 - the defect of title is not based on an instruction of the Purchaser and
 - the breach was not caused by the fact that the Purchaser changed the delivery item on their own authority or used it in a manner not in accordance with the contract.
- 7. Liability for damages due to fault.**
- 7.1** The Supplier's liability for damages, irrespective of the legal reason, particularly in relation to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unauthorised actions, is limited in accordance with section 7 insofar as such liability is a matter of fault.
- 7.2** The Supplier is not liable in the event of simple negligence on the part of their management, legal representatives, employees or other vicarious agents, insofar as such negligence does not constitute a breach of material contractual obligations. Material contractual obligations include the obligation for timely delivery and installation of the delivery item, the obligation for the delivery item to be free of defects which impair its operability or usability to a more than insignificant extent, as well as advisory and protective obligations and a duty of care which are intended to enable the Purchaser to use the delivery item in accordance with the contract or to protect the life and limb of the Purchaser's personnel or to protect the Purchaser's property from considerable damage.
- 7.3** Insofar as the Supplier is liable for damages on the grounds pursuant to Section 7.2, such liability is limited to damages which the Supplier has foreseen at the conclusion of the contract as a possible consequence of a breach of contract or which the Supplier should have foreseen in the application of due care and attention.
Indirect damages and consequential damages resulting from defects of the delivery item are also only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.
- 7.4** In the event of liability for simple negligence, the Supplier's obligation to compensate for property damage and any further financial losses resulting therefrom is limited to the insured sum of EUR 5 million in the event of intervention by liability insurance and to the order value - per case of damage - in the event of non-intervention by insurance, even if the breach is a breach of a material contractual obligations.
- 7.5** The aforementioned exclusions and limitations of liability apply to the same extent in favour of the management, legal representatives, employees or other vicarious agents of the Supplier.
- 7.6** The limitations of section 7 do not apply to the Supplier's liability for wilful conduct, for guaranteed quality characteristics, for injury to life, body or health in accordance with the German Product Liability Act.
- 7.7** The statutory prescription periods apply to claims for damages under Clause VII.
- 8. Transfer of order-relevant documents**
If necessary for processing purposes, subcontractors can be given access to drawings and order-relevant documents of the Purchaser subject to a confidentiality requirement. A separate agreement on the part of the Purchaser is not required in this regard.
- 9. Software use**
- 9.1** Insofar as software is included in the scope of delivery, the Purchaser is granted a non-exclusive right to use the software supplied including the documentation for such software. The software is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
- 9.2** The Purchaser may only copy, revise, translate or convert the software from object code to source code to the legally permissible extent (§§ 69 a et seq German Copyright Act (UrhG)). The Purchaser undertakes not to remove the manufacturer's specifications - particularly copyright notices - or to change such specifications without the express prior consent of the Supplier.
- 9.3** All other rights to the software and the documentation including copies remain with the Supplier or the software supplier. Sublicensing is not permitted.
- 10. Applicable law, place of jurisdiction**
- 10.1** If the Purchaser is a merchant, a legal entity under public law or a special fund under public law or if the Purchaser has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from the business relationship between the Purchaser and the Supplier is Weiden in der Opf. or the registered office of the Supplier. Such a decision is at the discretion of the Supplier. In such cases, however, the sole place of jurisdiction for legal actions against the Supplier is Weiden in der Opf./Germany. Mandatory statutory provisions pertaining to sole places of jurisdiction remain unaffected by this provision.
- 10.2** Relations between the Supplier and the Purchaser are governed solely by the law of the Federal Republic of Germany to the exclusion of German private international law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- 10.3** Insofar as the contract or these General Terms and Conditions of Sale contain loopholes, legally effective provisions, which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Sale had they been aware of such loopholes, are deemed to be agreed to fill such loopholes.