

General Terms and Conditions of Delivery for the Customer/Principal

1. Application

(1) All deliveries, performances and proposals of AFL are based exclusively on these General Terms and Conditions of Delivery. These are a component of all contracts AFL concludes with its contract partners (hereinafter "Customer" and others) for deliveries or performances. They also apply to all future deliveries, performances or proposals to or from Customer, even then if they are not separately agreed again.

(2) Terms of business of Customer or third parties do not apply, even if we do not explicitly contradict their applicability in the individual case. Even if we refer to correspondence containing or referring to the terms of business of Customer or of a third party, this does not imply agreement on our part that such terms of business apply.

2. Proposal and contract conclusion

(1) A contract between Customer and us first comes into being with our written confirmation of the order Customer places with us. The scope of delivery or performance is subject solely to our written confirmation.

(2) Our proposals are non-committal and are not binding for follow-up orders.

(3) Unless the usability for the contractually foreseen purpose presupposes a precise match, statements about the objects of delivery or performance (e.g. weights, dimensions, utility values, load capability, tolerances and technical data) and our representations of them (e.g. drawings and illustrations) are only approximate. They are descriptions or designations of the delivery or performance and not guaranteed characteristics. Deviations usual in the trade which occur due to statutory stipulations or technical improvements and replacements of parts by technically equivalent parts are admissible inasmuch as these do not impair suitability of use for the contractually foreseen purpose.

(4) Delivery of excess and short lengths is admissible up to a deviation of 10%. Billing is based on the delivery quantity. However, Customer has no claim to subsequent delivery of a lacking quantity, damage compensation or withdrawal. Partial deliveries are admissible if this does not give rise to disadvantages for use.

3. Prices and payment

(1) Our prices apply freight-paid to place of destination in Germany, not unloaded and without packaging.

(2) In the case of a delivery time of more than 4 months, we reserve the right to increase the prices in accordance with the costs increases caused by higher personnel costs or higher prices for working resources and materials. If the increase is more than 4.5% of the agreed price, then if Customer is not a chartered merchant (Kaufmann) he has the right to withdraw and this right must be exercised in writing within one week after receiving notice of the price increase.

(3) Our invoices are immediately due for payment within the respective payment target time. Customer is in default at the latest on expiry of 30 days after invoice maturity and receipt (§ 268 paragraph 3 BGB – *German Civil Code*). Unless explicitly agreed otherwise in writing, all payments are made in Euro. Payments must be made without any deduction and free of costs to us.

(4) We charge default interest with 8% p.a. above the respective basic lending rate of the European Central Bank. Default interest is higher if we evidence a burden at a higher interest rate.

(5) Payments may not be withheld on the grounds of counterclaims of Customer that we do not acknowledge or that are not established with lawful finality, and netting with such claims is also not admissible. The purchase price is due after each delivery in the event that partial deliveries are made. All claims against Customer become due immediately if Customer is in default with fulfilment of one or several liabilities or culpably does not fulfil other essential obligations from the contract or if we gain knowledge of circumstances diminishing the credit standing of Customer, especially such as discontinuation of payments, and pending settlement or insolvency proceedings. In these cases we are entitled to withhold outstanding deliveries or to only deliver against advance payment or provision of collateral.

4. Delivery and delivery time

(1) Deliveries are made ex-works.

(2) Unless a firm period or date has been explicitly promised or agreed, periods and dates we forecast for deliveries and performances are invariably only approximate. If shipment was agreed, then delivery periods and dates relate to the point in time of handover to the haulier, freight agent or other third party commissioned to undertake the transportation.

(3) Notwithstanding our rights if Customer is in default, we can demand from Customer that delivery and performance time periods are prolonged or that delivery and performance dates are deferred by that period of time for which Customer does not fulfil his contractual obligations to us.

(4) We are not liable for delivery impossibility or delay if this is caused by force majeure or other circumstances unforeseeable at the time of contract conclusion (e.g. operating disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, scarcity of labour, energy or commodities, difficulties in the procurement of necessary official permits, measures by public authorities or lacking, incorrect or unpunctual deliveries from suppliers) and for which we are not answerable. We are entitled to withdraw from the contract inasmuch as such occurrences render delivery or performance significantly more difficult or impossible for us and the impediment is not merely temporary. In the event of temporary hindrances, the delivery or performance periods prolong and the delivery or performance dates are deferred by the duration of the hindrance plus an appropriate startup period. If Customer cannot be reasonably expected to accept the delivery or performance as a result of the delay, then Customer can declare withdrawal from the contract by way of immediate declaration in writing.

(5) We are entitled to make partial deliveries.

(6) If we are in default with a delivery or performance or if a delivery or performance is impossible for any reason whatsoever, then our liability for damage compensation is limited pursuant to § 9 of these General Terms and Conditions of Delivery.

(7) In otherwise, in the event of default for which we are answerable Customer is first entitled to assert further rights if a subsequent period to perform of at least three weeks set by Customer after default came into being has lapsed fruitlessly. If Customer withdraws from a placed order without being entitled to do so, then notwithstanding the possibility of asserting higher actual damages we can demand 10% of the selling price for the costs incurred from processing the order and for lost profits. Customer has the right to evidence that damage does not exist or that the damage is less than claimed.

5. Place of fulfilment, shipment, packaging, passage of risk, acceptance

(1) Unless stipulated otherwise, Mönchengladbach is place of fulfilment for all obligations from the contractual relationship.

(2) We decide the shipment type and packaging at our own dutiful discretion. Shipment packagings are billed separately.

(3) Risk passes to Customer at the latest with handover of the delivery item (whereby beginning of the loading process is decisive) to the haulier, freight agent or other third party commissioned with carrying out the shipment. This also applies if partial deliveries are made or if we have assumed to undertake other performances (e.g. shipment or installation). If shipment or handover is delayed due to a circumstance caused in the sphere of Customer, then risk passes to Customer as from that day on which the delivery item is ready for shipment and we have notified this to Customer.

(4) Storage costs incurred after the passage of risk are borne by Customer. In the case of storage with us, the storage costs are 0.25% of the invoice amount of the delivery items to be kept in store per expired week. This does not prejudice the right to assert and evidence higher or lower storage costs.

(5) Inasmuch as an acceptance must take place, the purchase item is deemed accepted if

- the delivery and, inasmuch as we owe installation, the installation is concluded and we have notified this to Customer and have demanded of Customer that he accepts with reference to the implied acceptance according to this § 5 (5), or

- 12 working days have lapsed since the delivery or installation or Customer has started to use the purchase item (e.g. has taken the delivered plant into operation) and in this case 6 working days have lapsed since delivery or installation, or

- Customer has neglected the acceptance within this period of time for a reason other than a deficiency notified to us and which renders impossible or essentially impairs use of the purchase item.

6. Liability for deficiencies

- (1) Customer is obligated to inspect the delivered goods immediately on delivery and to notify existing deficiencies to us promptly in writing (but no later than before expiry of 5 working days following delivery). Deficiencies complained late, i.e. in contravention of the aforesaid duty, shall not be considered by us and are excluded from warranty. We only acknowledge deficiency complaints if they are notified in writing. Complaints asserted toward sales organisation employees or third parties do not constitute proper complaints in terms of form and due time.
- (2) Customer is obligated to give us the complained delivery or parts of it for examining the complaint. The warranty is void if Customer culpably refuses.
- (3) The provisions governing delivery periods and times apply correspondingly if subsequent improvement or replacement delivery is performed due to a justified deficiency complaint.
- (4) Customer has the following rights in the case of a deficiency determined as such and reported by effective deficiency notice:
- (a) In the event of a deficiency Customer initially has the right to demand subsequent fulfilment from us. We have the right to choose at our own dutiful discretion between a new delivery of the item or remedy of the deficiency.
- (b) Furthermore, if one subsequent fulfilment attempt fails we have the right to attempt subsequent fulfilment again at our own dutiful discretion. Customer first has the right to withdraw from the contract or to reduction if the repeated subsequent fulfilment also fails.
- (5) The warranty period is one year as from delivery dispatch. In every case Customer must evidence that the deficiency already existed before delivery dispatch.
- (6) We are not liable for natural wear and tear.
- (7) In the event of deficiencies in construction components of other manufacturers which we cannot remedy due to license rights or factual reasons, we shall at our own discretion either assert our warranty claims against the manufacturers and suppliers for account of Customer or assign these claims to Customer. Warranty claims against us only exist for such deficiencies under the other prerequisites and pursuant to these General Terms and Conditions of Delivery if the enforcement of the aforesaid claims against the manufacturers and suppliers before a court of law was unsuccessful or is without prospects of success, for instance due to insolvency. The statutory limitation period of the warranty claims in question which Customer has against us is suspended for the duration of the litigation.

7. Fault-based liability for damages

- (1) Our liability for damage compensation, on whatever legal grounds, especially from impossibility, default, defective or erroneous delivery, breach of contract, breach of duties in contractual acts and illicit acts, is limited inasmuch as this is respectively founded in a fault in accordance with this § 7.
- (2) We are not liable
- (a) in the case of minor negligence of our organs, lawful representatives, employees or other vicarious agents;
- (b) in the case of gross negligence on the part of our non-managerial employees or other vicarious agents inasmuch as the matter does not concern a breach of essential contract duties.
- (3) Inasmuch as we are liable for damages on the grounds pursuant to section (2), then this liability shall be limited to those damages we foresaw at contract conclusion as possible consequence of a breach of contract or must have foreseen considering the circumstances known to us or which we must have known under the due care and diligence usual in business. Indirect damage and consequential damage resulting from deficiencies of the delivery item are moreover only eligible for compensation if such damages must be typically anticipated in using the delivery item for its intended purpose.
- (4) In the event of liability for minor negligence, our obligation to compensate damage to property or injury to persons is limited per damage occurrence to the invoice amount of the delivery in question, even if the matter concerns a breach of essential contract duties.
- (5) The foregoing liability exclusions and limitations apply in the same scope in favour of our organs, lawful representatives, employees and other vicarious agents.
- (6) Inasmuch as we give technical information or consulting and this information or consultancy does not pertain to the contractually agreed performance scope owed by us, then said information and consulting is given gratuitously and under exclusion of all liability.
- (7) The restrictions of this § 7 do not apply to liability due to wilful conduct, injury to life, limb or health or due to product liability law.

8. Retention of title

- (1) Delivered goods remain our property until all our claims against Customer from the business relationship are fulfilled. In the case of conduct by Customer in breach of contract, especially default with payment, we are entitled to recover possession following withdrawal and Customer is obligated to surrender the goods.
- (2) Customer processes or reworks the goods invariably for us. If the delivery items are processed with other items not belonging to us, then we acquire co-ownership in the new item in the ratio of the value of the delivery items to that of the other processed items at the time of processing.
- (3) Customer is entitled to resell the delivery items in orderly business to resellers outside an account current relationship: however, Customer herewith assigns to us all claims to which Customer is entitled from the resale to the amount of the purchase price agreed between us and Customer (including VAT) and this irrespective of whether the delivery items were resold without or after processing. Customer is authorised to collect these claims after they are assigned. This does not impair our entitlement to collect the claims ourselves, but we obligate ourselves not to collect the claims for as long as Customer duly properly fulfils his payment obligations and is not in default with payment. However, if this should be the case, we can demand that Customer discloses to us the assigned claims and the identity of the debtors, provides all information necessary for collecting the claims, surrenders the documents pertaining thereto and notifies the assignment to the debtors (third parties).
- (4) Before ownership passes to him Customer may neither pledge the delivery items nor transfer title to them as security. Customer must notify us immediately in the event of attachment, confiscation or other disposition by third parties and provide to us all information and documents necessary to safeguard our rights. Government officials or third parties must be informed of our proprietary rights. We obligate ourselves such that on demand by Customer we shall release the collateral to which we are entitled if the value of this collateral exceeds the collateralised claims, inasmuch as these are not yet settled, by more than 20%. Assertion of the rights from the retention of title does not release Customer from his contractual obligations. The value of the goods at the point in time of recovery will only be credited to the existing claim.

9. Jurisdiction/Choice of law

- (1) Place of jurisdiction for any contentions from the business relationship between us and Customer is as we choose either our domicile or the domicile of Customer. Mönchengladbach is exclusive place of jurisdiction for lawsuits against us. This regulation does not affect overriding statutory provisions stipulating exclusive jurisdictions.
- (2) The relations between us and Customer are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

10. Severability clause/Written form

- (1) If the contract or these General Terms and Conditions of Delivery should contain regulatory gaps, these shall be deemed as filled by those lawfully valid regulations which the contract parties would have agreed in the sense of the economic aims of the contract and purpose of these General Terms and Conditions of Delivery had they recognised the regulatory gap in question.
- (2) Additions and amendments to the concluded agreements, including these General Terms and Conditions of Delivery, must be set out in writing to be effective. With the exception of holders of commercial attorney and managers, our employees are not authorised to reach deviating verbal agreements. The written form requirement is deemed satisfied with transmission via fax; other forms of telecommunication transmission, especially via email, do not suffice.
- (3) Note: Customer acknowledges that we store data from the contract relationship in accordance with § 28 BDSG (*Federal Data Protection Act*) for processing purposes and that we reserve the right to transmit the data to third parties inasmuch as necessary to fulfil the contract (e.g. insurance companies).