

## General delivery terms of Messrs Cloer Germany GmbH & Co. KG

### I. General regulations

- For the extent of the deliveries or services (referred to in the following as 'deliveries') the mutual written declarations are authoritative. General business conditions of the customer apply however only in this respect; if the supplier or service provider (referred to in the following as 'supplier') has particularly agreed to them in writing.
- The supplier reserves absolute property utilisation rights on copyright of cost estimates, drawings and other documents (referred to in the following as 'documents'). The documents may be made accessible to third parties only with the previous consent of the supplier and have to be returned immediately on request, if an order is not placed with the supplier. Paragraphs 1 and 2 apply accordingly to the customer's documents, however these may be made available to third parties to which the supplier has properly assigned deliveries.
- Partial deliveries are permissible as far as they are reasonable for the customer.
- If the supplier causes the delay, the customer can claim compensation for each complete week of the delay to the amount of 0,5%, however altogether at the most 5% for the part of the delivery that could not be put into appropriate operation due to the delay, provided he can prove adequately that damage has been caused because of the delay.
- Both compensation claims by the customer on the grounds of delivery delay as well as compensation claims in place of performance which exceed the limits mentioned in no. 3 are in all cases excluded from delayed delivery, even after termination of any time period posed on the supplier. This does not apply in cases of wilful intention, gross negligence or of injury to life, limb or health. The customer can only withdraw from the contract in the context of the legal regulations if the delay in delivery is the responsibility of the supplier. A change of the burden of proof to the disadvantage of the customer is not connected to the aforementioned regulations.
- The customer is obliged, at the request of the supplier, within a reasonable period of time, to explain whether he withdraws from the contract because of the delay or if he accepts a delayed delivery.

### II. Prices and payment conditions

- The prices are ex works excluding packing plus the respective valid legal sales tax.
- If the supplier has taken on the installation or assembly work and nothing else is agreed upon, the customer is liable for all necessary additional costs such as travelling expenses, costs for the transportation of the tools and the personal baggage, as well as travel allowance, besides the remuneration agreed on.
- Payments have to be made free of charge to the place of payment of the supplier.
- The customer can only offset such demands that are undisputedly or definitely established.

### III. Reservation of Proprietary Rights

- The delivered items (goods under property reservation) remain the property of the supplier until all claims against the customer entitled to him have been fulfilled in accordance with the obligations of their business relationship. As far as the value of all safeguarding rights which are entitled to the supplier exceed the level of all protected claims about more than 20%, the supplier will release at the request of the customer a corresponding part of the safeguarding rights.
- During the duration of the reservation of proprietary rights, pawning or safeguarding transference is forbidden on the part of the customer and the further disposal of the items in the course of general business activities is only allowed on the condition that the reseller only receives payment or takes on property reservation when he has fulfilled all his payment obligations.
- The customer has to inform the supplier immediately concerning pawning, confiscation or other disposals or interventions of third parties.
- In the event of obligation violations by the customer, particularly in the case of delayed payment, the supplier is entitled to withdrawal and return following an unsuccessful setting of a legal, adequate period of notice. The legal regulations concerning the dispensability of a setting of a period of notice remain unaffected. The customer is obliged to surrender the delivery items.

### IV. Periods for Deliveries; Delay

- The compliance with deadlines for deliveries presupposes the punctual receipt from the customer of delivery documents, the necessary authorisations and approvals, particularly of plans, as well as the compliance to the payment conditions agreed on and other obligations by the customer. If these prerequisites aren't satisfied on time, then the periods are extended accordingly; this does not apply if the supplier is responsible for the delays.
- If the non-compliance of the periods has to be put down to an act of God, e.g. mobilisation, war, riot or to similar events, e.g. strike, shutout, the periods will be extended accordingly

### V. Transfer of Risk

- Risk is transferred to the customer on freight paid deliveries when the delivery has been brought to dispatch or collected. Deliveries by us are insured against the usual transportation risks at the request and the expense of the customer.
- If the dispatch, the delivery, the commencement, the execution of the installation or assembly, the take-over in own operation or the test operation is delayed for reasons brought about by the customer or the customer for other reasons delays acceptance, risk is transferred to the customer.

### VI. Material defects

The supplier is liable for material defects as follows:

- Parts or services have to be improved free of charge, newly delivered or newly produced, at the choice of the supplier, which within the limitation period - not considering the operational period - have proved to contain a material defect, provided that it can be proved that the defect was already present at the time of transfer of risk.
- Material defect claims lapse within 24 months. This does not apply in so far as the laws according to §§ 438 paragraphs 1 no. 2 (construction and construction matters), 479 paragraph 1 (redress claims) and 634a paragraph 1 no. 2 (structural faults) of the Civil Code, which stipulates longer deadlines, as well as in cases of the injury to life, limb or health or deliberate or wilful negligent behaviour on the part of the supplier and when hiding a defect The legal regulations concerning processes delays, delays or the new beginnings of deadlines remain unaffected.
- The customer has to report material defects immediately in writing to the supplier.
- Payments of the customer may be held back which are in adequate relationship to the apparent material defects reported by the customer. The customer can only hold payments back if a complaint is asserted about which there can be no doubt. If the customer's complaint is wrongly reported, the supplier is authorised to request the customer to compensate him for any costs arising.
- The supplier is initially granted the opportunity of a re-delivery within a reasonable time period.
- If the re-delivery fails, the customer can withdraw from the contract or decrease the compensation regardless of possible damage compensation entitlements in accordance with §11 of the contract.

#### VII. Commercial protection rights and copyrights; defects of title

1. Provided nothing else is agreed upon, the supplier is obliged to render the delivery merely in the country of the delivery location free of commercial protection rights and copyrights of third parties (referred to in the following as 'protection rights'). In the event that a third party makes justified claims against the customer for protection rights damages caused by deliveries made by the supplier and used in accordance with the contract, the supplier is liable to the customer within the period defined in article. VI. No. 2 as follows:
  - a) The supplier will, after his choice and at his own expense, obtain either user rights, change them so the protection rights are not violated or are exchanged for the delivery in question. If these reasonable conditions are not possible, withdrawal or reduction rights apply on the part of the customer.
  - b) The obligation of the supplier regarding damage compensation is according to article IX.
  - c) The aforementioned obligations of the supplier only apply in so far as the customer immediately informs the supplier in writing about the claims asserted by a third party, does not recognise an injury and all defensive measures and comparison negotiations remain available. If the customer puts to use the delivery due to damage reduction or other important reasons, he is obliged to point out to a third party that the use of the delivery is not an acknowledgement of a protection right violation.
2. Claims of the customer are excluded as far as he is responsible for a protection right violation.
3. Furthermore, claims of the customer are excluded if the protection right violation occurred due to special handicaps of the customer, due to unforeseen use or caused due to the delivered items being altered or used together with another product not delivered by the deliverer.
4. Claims by the customer in the event of protection rights violation which are legislated for in No. 1 a) are also subject to the conditions in article VI, No. 4, 5 and 9.
5. In the case of other defects of title, the regulations of article VI. apply accordingly.
6. Further reaching claims or claims by the customer other than those legislated for in article VII. against the supplier and its accomplices due to a defect of title are not possible.

#### VIII. Impossibility; Contract adjustment

1. In so far as the delivery is impossible, the customer is authorised to require compensation unless the supplier is not responsible for the impossibility. However, compensation claims of the customer are limited to 10% of the value of the part of the delivery that cannot be taken into appropriate operation due to inability to supply. This restriction does not apply in the case of wilful gross negligence or injury to life, limb or health; a change of the burden of proof to the disadvantage of the customer is not connected herewith. The right of the customer to withdraw from the contract is not affected.
2. Should unforeseeable events according to article IV. No. 2 considerably alter the economic standing or the contents of the delivery or have a considerable effect on the operation of the supplier; the contract will be adapted appropriately under observance of good faith. In so far as this is not economically acceptable, the supplier is within his rights to withdraw from the contract. Should he wish to make use of this right of withdrawal he has to inform the customer about it immediately, also if an extension of the delivery period has been agreed with the customer beforehand.

#### IX. Other damage compensation entitlements

1. Damage and charges compensation entitlements of the customer (referred to in the following as 'damage compensation entitlements') for whatever reason, particularly because of violations of obligations from the contractual obligations and unlawful actions are excluded.
2. This does not apply in the case of mandatory liability, for example according to the product liability law, in cases of the gross negligence, because of the injury of the life, limb or the health or because of violations of essential contractual obligations. The damage compensation entitlements for violation of essential contractual obligations is limited however to the typical, foreseeable contractual damages or gross negligence, in so far as gross negligence or liability because of the injury of the life, limb or the health are given. A change in the burden of proof to the disadvantage of the customer is not connected with the aforementioned regulations.
3. In as far as the customer is entitled to compensation damages according to article IX., these claims to damages lapse following the expiry of the limitation period being necessary for material defect claims in accordance with article VI. No. 2. For damage compensation claims according to the product liability law, the legal limitation regulations apply.

#### X. Court of Jurisdiction and user rights

1. The court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the place of business of the supplier, if the customer is a businessman. The supplier is authorised, however, to instigate legal proceedings at the customer's place of business.
2. German material rights apply for the legal relationship in connection with this contract under exclusion of the agreement of the United Nations concerning contracts relating to international product purchase (CISG).

#### XI. Liability of the contract

The legal ineffectiveness of individual regulations does not affect the contract as a whole. This does not apply when adherence to the contract would represent unreasonable hardship for one of the contractual parties.

Arnsberg, July 2007

Release.CT-1643.EN.1.0 from 2007-07-06



<https://koss.cloer.com/log/01935174/xTC3tLg2ssY2tg>