

General Terms and Conditions

1. For all deliveries and services of the Druckguss Service Deutschland GmbH (in the following called "supplier") the following general delivery conditions apply, which build an integrated part of the order conditions unless a different written agreement has been made in individual cases. Agreements of any kind (also per telephone and telegraph) are only accepted by the supplier if confirmed in writing. Orders are valid with the written order confirmation by the supplier. Instances of an "act of God" as mentioned in these general delivery conditions include: mobilisation, war, revolution, public disturbances of any kind, natural disasters, etc. Adverse purchase conditions of the ordering party are not binding for the supplier even if not expressly repudiated.

2. If one of the terms of these delivery conditions should prove to be ineffective in total or in part, the contract parties replace this term by a new agreement which shall match this term as closely as possible in regard to legal and economic success. The ordering party and the supplier may only transfer their rights deriving from this contract to third parties by prior mutual agreement. Exceptions hereof are assignments of financial claims according to § 354a of the German Commercial Code.

3. To be considered warranted are solely such characteristics which are expressly called warranted in the contract. Special protective means are only delivered at the expense of the ordering party if this is agreed upon. The supplier has the right to modify the part to be delivered if this seems necessary due to the design development and technical advancement.

II. Plans and Documentation

1. The information given in the documents contained in the offer(s) and/or the order confirmation, like brochures, illustrations, drawing, are only approximately authoritative and only binding if they are expressly defined as binding in the contract.

2. Handover of the plans and technical documentation does not transfer ownership and copyright to the receiving party; they must not be made accessible to third parties, in particular to competitors.

3. If no order takes place, all plans and technical documentation have to be returned to the supplier, immediately after assigning the order to a third party, else 6 months after transmittal. In both cases, the supplier is to be reimbursed for the incurred costs according to the LHO (Leistungs- und Honorarordnung der Ingenieure, service and fee structure for engineers) of the Verein Deutscher Ingenieure (Association of German Engineers),

4. If the supplier grants the customer technical assistance of any kind free of charge which refers to the creation of system parts which are manufactured by the customer himself or by third parties, then this consulting is done to the best knowledge. If the customer claims insufficient consulting or similar issues or in case of violation of any secondary obligation, the supplier is only liable in case of unlawful intent or gross negligence.

III. Price

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1. The prices are considered without packaging, shipped ex works and in EURO, unless otherwise specified. Packaging material will not be taken back.
2. Services not included in the contract or the authoritative offer are invoiced separately. Customs and stamp duties, order taxes, fees for import, export and transit licences, consulate fees, transfer costs (foreign exchange licences, compensating bonuses), sales and turnover compensation tax as well as all import-related expenses are at the expense of the ordering party.
3. The offers and order confirmations of the supplier base on the material costs, salary costs, transport and insurance premiums, custom duties, taxes, etc. valid at the time of issue. If these cost factors are subject to increases or reductions by the time of delivery, the supplier reserves the right to invoice the goods with the sales rates valid at the time of delivery.

IV. Mounting

1. Mounting and commissioning is at the customer's expense. If requested, the supplier provides competent technicians on conditions to be agreed upon. If the cost estimate contains field service rates, the supplier reserves the right to modify those according to present salary and employment contracts.
2. At the customer's expense are all construction works such as earth moving, masonry, carpenter and joiner works, glazier, painter and forging works, the building and closing of openings in walls, floors, etc., cleaning works, the provision of the required equipment, lubrication, burning and cleaning material as well the provision of water, heat and lights and a lockable room for the technician's tools. Furthermore, materials and operating personnel for tests and commissioning of the object are also at the customer's expense.
3. Prior to mounting works, the erection site must be ready so that the mounting works can proceed unhindered. The locations intended for erection must be have plasterwork, windows, doors, ceilings, and stairs before the mounting works begin, and they must have openings big enough to allow for transporting the machines to the proper site in one piece whenever possible. In the interest of a smooth mounting process, the supplier amply dimensions the required material, more than the essential amount according to plan. For this reason, the material not required for mounting of the delivery as named herein must be handed back to the supplier after commissioning the system. Advances required for mounting are to be paid for by the customer if requested by the supplier.
4. The customer bears full responsibility for accidents, results thereof and property damages caused by inadequate condition of the mounting and hoisting equipment and other installations and auxiliary materials, even if the staff uses them without complaints. The customer also bears full responsibility for liability and accident risks caused or suffered by his staff or by auxiliary workers or third persons in connection with the mounting works, even if the supplier's staff is in charge. If the running operation must be taken into consideration, the customer has to advise the supplier expressly and in written form.

V. Payment Terms

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1. The payment terms result from the order confirmation. In the absence of specific agreements, the ordering party has to pay for systems and machines 40% of the sales price with the order confirmation, 50% on the notice of the order being ready for dispatch, and 10% after delivery, without any deductions and free of transaction charges to the supplier's designated account. In case of spare parts, the payment terms are 100 % net on delivery.
2. In case of destruction, loss or damages of the goods, which in the absence of other agreements are at customer's risk, as well as in case of a delay in production, delivery, mounting or commissioning due to the customer's fault, accident or an act of God, the payments nevertheless have to be transferred on the dates stated in the order confirmation.
3. The services provided by warranty and special guarantees shall not impact the timely completion of the agreed terms of payment. Withholding payments due to any counter claims is not permitted.
4. If the fulfilment of the agreed payments is questioned due to an act of God or if any economic factors change in the relation between the Federal Republic of Germany and the country of destination or the customer's country (e.g. exchange rate, transfer options, etc.), then the supplier has the right to interrupt production of the machines or to withhold goods ready for dispatch, and to redefine the specific terms of delivery, especially the payment terms, so that the supplier retains at least the same security for processing the transaction and for payment reception as was the case at the time of signing the contract.
5. If the customer is overdue with a payment or the transfer of agreed bills of exchange, bank guarantees or other securities by more than two weeks, the entire remaining sum will be due at once.
6. If the delivery item has been delivered before the ordering party fulfilled the entire payment obligation, the ordering party is beholden to insure the delivery item sufficiently for the benefit of the supplier until the payment is complete, and to hand over the insurance certificate to the supplier upon request.

VI. Reservation of Ownership

1. The supplier reserves ownership of the delivery item until all payments as stated in the delivery contract have been made.
2. If the delivery item is firmly attached to another item, the ordering party transfers his rights of ownership or partial ownership acquired by this connection in advance to the supplier until completion of all payment obligations.
3. If the ordering party sells the delivery item, which requires express approval by the supplier, the ordering party transfers in advance his claims arising from the sales contract to the supplier until all payment obligations have been fulfilled, The ordering party may not pawn nor convey the delivery item without approval by the supplier until all payment obligations have been fulfilled, and in case of attachment by third parties of the delivery item or other curtailing of the property rights of the supplier has to notify the supplier without delay.

VII. Delivery Time

1. The delivery time as agreed upon is valid for delivery ex works and is calculated from the date on which the supplier has all the required technical information, plans, drawings, etc. as well as the contractual down payment, the import licence if required and the letter of credit if agreed upon.
2. The delivery time will be extended appropriately if (be it on the supplier's side, one of his subcontractors or shipping companies) strike, lockout, boycott, accidents, operational disruptions, deficient goods for major parts or acts of God hinder the adherence to the agreed delivery time significantly, same with non or delayed payment, and in the last case not affecting the right of the supplier to withdraw from the contract. The delivery time will also be extended appropriately if the authorities' approvals are delayed, if the customer changes his order, if the customer is delayed with the works he has to perform beforehand or if the place of delivery is not in the agreed state in time. The supplier is not responsible for these conditions even if they occur during an already existent delay of delivery.

VIII. Passage of Risk

1. For delivery ex works the passage of risk occurs latest with the delivery goods leaving the respective delivery works. If the shipment is delayed by request of the ordering party or due to other circumstances not in the field of responsibility of the supplier, the passage of risk occurs with the date on which the goods are marked ready for dispatch. In case of delivery ex works and in the absence of other agreements, the supplier undertakes to ship the goods to the best of his knowledge and at the ordering party's expense and risk, and he insures the delivery item if requested by the ordering party against transport risks.
2. Additionally, the moment of passage of risk is determined according to the agreed type of delivery following international rules for interpretation of the Incoterms as valid on the day of signing the contract.

IX. Acceptance

1. Insignificant complaints do not entitle the ordering party to refuse acceptance of the delivery.
2. Partial deliveries are considered permissible and agreed.
3. Acceptance tests performed beyond the normal control of the supplier are at the ordering party's expense and require express agreement.
4. The acceptance of the machines, system, etc. as delivered by the supplier is considered completed if the customer does not raise a justified plea in writing within two weeks starting with delivery for individual machines or devices or within two months for entire systems or reconstructions. After the customer has accepted the delivery, any liability on the supplier's side will be void, except the warranty as listed below in section X. referring to material, construction or completion.

5. If the ordering party does not accept the delivery to the contractually agreed time, the ordering party still has to fulfil the payment obligations on the agreed due dates. The supplier is beholden to provide storage of the delivery item at the ordering party's expense and risk and to secure the insurance at the ordering party's expense if requested by this party. The calculated costs for storage in the own works are at least 0.5 % of the contractual price of the stored item for every full month. Other rights the supplier can claim due to the delay of acceptance remain unaffected.

X. Notices

As far as the contract parties communicate via electronic mail (e-mail), they accept the unlimited validity of the declarations of intent transmitted this way in line with the following regulations. The e-mail must include the name and e-mail-address of the sender, the posting time (date and time) as well as a representation of the sender's name in the end of the message. Unencrypted data sent over the internet do not ensure confidentiality. Each contract party provides on his side on request of the other party a co-ordinated encryption system such as PGP. An e-mail received according to above regulations will be considered originating from the other partner except in case of counter evidence. The obligation of the e-mail and thus the text form is valid for all statements caused by normal implementation of the contract. This text form is excluded, however, in case of contract cancelation, for measures to refer a dispute to arbitration, as well as for statements which one of the contract parties expressly required in written form, differing from this agreement.

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XI. Liability for Deficiencies in the Delivery

1. The delivery is considered fulfilled if the delivery item has essentially been delivered according to the contract conditions.
2. The supplier has the obligation and the right, excluding all other claims of the ordering party, to remedy every defect impeding the proper use of the delivery item if such defect was verifiably present on passage of risk or verifiably occurs within the warranty period due to a cause dating back to the time of passage of risk, and on the supplier's choice by repairing the defective part, by delivery a replacement part or by a new delivery. As far as ownership of any replaced items has already passed over to the ordering party, it will pass over to the supplier.
3. The warranty period of the supplier is only valid for such defects occurring in operating conditions as defined in the contract or in absence thereof in usual operating conditions and with proper use. It does in particular not apply for defects caused by one of the following reasons: Improper mounting by the ordering or a third party, bad maintenance, improper use, excessive operational demands, normal wear, unauthorised repairs, unsuitable execution of construction work, unforeseeable external influence.
4. The warranty period is 6 months - in case of multi-shift operation 3 months - after commissioning. If shipment, erection or commissioning are delayed for reasons not within the field of responsibility of the supplier, the warranty period becomes void latest 12 months after passage of risk. For third party products, the warranty terms of the respective sub-supplier apply.

5. For parts repaired under the terms of these regulations and for spare parts delivered, the same regulations apply as for the initial delivery item, but the renewed warranty period starting with the finish of the defect remedy only amounts to 3 months unless the original warranty period was beyond this period of time. For the other parts of the delivery item the warranty period is only extended by the time the delivery item was not operational due to this defect.

6. The ordering party can only claim the warranty deed of the supplier if the supplier is informed about the defect without delay and if the supplier receives every possibility to detect and remedy the defect.

The supplier is also liable for delivery deficiencies if the ordering party fulfils his contractual duties, in particular the payment obligation.

7. Of the costs incurred by repair or delivery of replacement parts, the supplier - as far as the claim proves to be legitimate - bears the costs for the replacement parts including shipment as well as appropriate costs for mounting and dismounting, and also, if this can be deemed necessary in the individual case, the costs for the provision of technicians, if applicable. The others costs are to be borne by the ordering party. The ordering party is beholden to remedy insignificant defects at his own expense by himself if so requested by the supplier.

8. If found that the supplier is irrevocably not able to remedy the defects, he has the right and the obligation to take back the delivery item and reimburse the ordering party for any payment made for this item. This excludes any further claims of the ordering party, derived from any legal ground.

9. All defect claims of the ordering party become void 6 months after claiming the defect, but earliest with the end of the warranty period.

10. Liability for reconditioning after expiration of the warranty period is only assumed if agreed upon expressly.

XII. Liability for secondary obligations

If the ordering party cannot use the delivered item in the sense of the contract due to a fault of the supplier, because of lacking or faulty completion of suggestions and consultations before or after signing the contract or other contractual secondary obligations - in particular instructions for operation and maintenance of the delivery item - then the regulation according to section X. applies correspondingly excluding all other claims of the ordering party.

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XIII. Exclusion of Damages

The cases of severe impeachment of the contract and their legal results as well as all claims of the ordering party except for those expressly listed in these terms and conditions, no matter on which legal ground, especially not expressly named claims for damage compensation, reduction in expenses or withdrawal of the contract are conclusively regulated in these terms of delivery. Under no circumstances shall arise claims of the ordering party for compensation for damages not to the delivery item itself, namely loss of production, loss of use, loss of orders, loss of profit or other direct and indirect damages.

XIV. Applicable Law and Place of Venue

1. The contract is subject to German law. The place of venue is Lübeck.

Salvatory Clause

The invalidity, in whole or in part, of any of the provision of these Terms and Conditions, shall not affect the enforceability of any of the other provisions thereof. The contract parties will replace the invalid provision by a valid provision which is nearest in meaning to the one intended by the parties.