

Shipping and Payment Terms

Armasys Armaturen und Systemtechnik GmbH

1. General

1. Our terms and conditions apply to all supply contracts, even if a special order confirmation is issued as part of a lasting business relationship. They apply to both contracts concluded with customers who are entrepreneurs within the meaning of §14 of the German Civil Code (BGB), or legal bodies covered by public law, or special funds under public law, as well as contracts with consumers as defined in §13 of the German Civil Code (BGB). Deviations from our conditions must be agreed to in writing. This also applies to subsidiary agreements, warranties, and subsequent contract changes. Any other arrangements should be included in the order confirmation.
2. Terms and conditions of the purchaser, even if they have been mentioned in the order, will not become part of the contract even if we do not expressly object to them.
3. If any provision of these Terms of Sale or any provision in any other agreement between the purchaser and us is invalid, the validity of the remaining provisions will not be affected. In such a case, the contracting parties will be obliged to agree on a valid effective regulation for the financial purposes of the invalid provision.

2. Prices and payments

1. The prices specified in our order confirmations are subject to value-added tax at the going statutory rate. In the event of an unexpected increase of more than 10% in the prices of raw material or labor and transport costs between contract and delivery time, we will be entitled to re-negotiate the pricing. Duties, inspection charges, monetary compensatory amounts and other fees based on public law shall be paid by the purchaser.
2. Packaging and transportation costs will be billed separately and at cost.
3. Invoices must be paid within 30 days net. The purchaser may only claim this discount if it is not in arrears with the payment of previous deliveries at the time of payment. We are entitled to require compensation by the purchaser for any additional expenses incurred by us due to a default of acceptance by the purchaser.
4. We only accept discountable and duly rendered and taxed bills of exchange on the basis of a corresponding agreement. Credits for bills of exchange and checks are subject to receipt less any out-of-pocket expenses of the day when we will be able to dispose of the consideration. If the purchaser fails to meet its payment obligations or ceases payments, or if we become aware of other circumstances that may diminish the creditworthiness of the purchaser, we will be entitled to declare the entire balance payable, even if we have accepted checks and bills of exchange. In addition, we will also have the right to demand payments in advance.

5. If payment terms are not met, we may charge interest at the rate of 8% above the base interest rate in each case. We reserve the right to assert a higher loss in the event of a default. The purchaser is at liberty to offer proof that the damage caused by the delay did not in fact occur or was not in the amount mentioned above. The provision of §353 of the Commercial Code, HGB, remains unaffected.
6. Offsetting of any counterclaims by the purchaser that we have disputed or which have not been legally established will not be permitted. The purchaser may only assert a right of retention if it is based on claims arising from the purchase agreement. If a complaint is lodged, payments by the purchaser may be withheld to an extent that is in reasonable proportion to the defects present.

3. Delivery Times and Delay

1. Delivery times and dates are only agreed to be binding if they have been expressly described by us as such. The delivery period will begin when the contract is entered into, but not before the provision of any documents, approvals, clearances to be provided by the purchaser and before receipt of a down payment that has been agreed to, or any other obligations. In this respect, the delivery period will be for the duration of the delay.
2. The delivery period shall be extended appropriately for measures in the context of legitimate industrial disputes, in particular strikes and lockouts, as well as in the event of unforeseen obstacles beyond our control or that of our vicarious agents, insofar as such impediments demonstrably affect the delivery of the item sold.
3. The same shall prevail if we do not make delivery in a timely manner. We will then be entitled to withdraw if manufacturers do not supply us, unless the non-delivery is our fault. We shall not be responsible for deliveries delayed or not made due to negligence on the part of our subcontractor, unless there is negligence with regard to selection or monitoring.
4. Compliance with the delivery period will require the fulfillment of the contractual obligations of the purchaser.
5. In addition to the statutory period pursuant to §286 (3) of the German Civil Code (BGB), we are entitled to delay delivery to the purchaser by means of another period of payment as defined by the calendar for the purposes of §286 (2) of the German Civil Code (BGB).

4. Returns

Returns of goods delivered may take place only after our previous written agreement, and with no shipping charges for the returns. The amount will be credited minus a service charge if the goods are in a pristine condition. The return fee will usually be 25% for orders with a minimum of €75.00. Any additional required examination and processing fees will be billed separately. Credit will not be given for individual or spare parts, custom-made items and fittings if production has been discontinued or if they are no longer in stock.

5. Transfer of Risk and Transportation

1. If the purchaser is a business owner for the purposes of §14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law, then in the event of a consignment purchase, the risk will pass to the shipping firm or freight carrier when the goods are transferred. This transfer of risk shall take place, at the latest, however, when the goods leave the warehouse or, if there is direct shipping ex works, the transfer will be made to the purchaser at the time when the goods leave the factory. This shall also apply even if we have accepted other services or partial deliveries.
2. If the shipment is delayed due to circumstances for which the purchaser is responsible, the risk shall be transferred to the purchaser as of the date of the offer of transfer.
3. Items that have been delivered should be accepted by the purchaser even if they have minor flaws, without prejudice to the rights set out in Section VI below.
4. Unless special terms are agreed on, the route and means of transportation will be left up to us.

6. Notice of Defects and Warranty

1. As soon as they are delivered, the purchaser must inspect the goods for defects, delivery condition, and standard properties. The purchaser must immediately give notification of any obvious defects. If the contract is a commercial transaction for both parties, then §377 of the Commercial Code (HGB) shall apply, with the proviso that written notification of detectable defects should be given to us within 14 days.
2. At our discretion, these items can be repaired or redelivered free of charge. This shall take place if, as a result of a circumstances prior to the transfer of risk, in particular due to faulty design, poor building materials, or defective execution, the goods delivered prove to be unusable or not materially damaged and thus are unusable. Any parts replaced shall become our property. If the entire purchased item is replaced by way of supplementary performance, we shall have a claim for unrestricted compensation for unlimited use of the returned item.
3. The right of the purchaser to assert claims based on defects shall expire in all cases 12 months from the time the risk passes, with the exception of the consumer business.
4. No warranty will be provided for damages resulting from inappropriate or improper use, faulty installation, or use by the purchaser or by third parties, missed maintenance if this is customary and/or recommended by the manufacturer, normal wear and tear, faulty or negligent treatment, unsuitable equipment, replacement materials, defective construction work, chemical, electronic or electrical influences, unless they are due to our negligence.
5. If corrective action is necessary, the purchaser must provide adequate time to make repairs. If any changes or repairs are improperly made by the purchaser or by third parties without our prior approval, liability for the resulting consequences will be done away with.

7. Retention of Title

1. We deliver exclusively under retention of title. All goods remain our property until fulfillment of all claims arising from the business relationship, including future and contingent claims.

2. If the purchaser pays by check and we issue a refinancing bill of exchange, our retention of title will expire only when we can no longer make a claim based on the bill of exchange.
3. The purchaser is entitled to resell the reserved goods in the ordinary course of business. The claims of the purchaser from the resale of the reserved goods are hereby assigned to us in the amount of the final invoice amount (including VAT). If the reserved goods are sold by the purchaser together with other goods not supplied by us, the assignment of the claims from the resale shall only apply in the amount of the value of the respectively sold reserved goods stated in our invoices. The purchaser is obliged to give notification of the assignment to its debtors at our request. We should be informed of any claims and the names of the debtors.
4. The purchaser is entitled to collect sums due from the resale. In case of default in payment on the part of the purchaser or if we become aware of circumstances which are, according to commercial judgment, suitable for reducing the credit-worthiness of the purchaser, we shall be entitled to revoke the right of collection.
5. The handling and processing of the goods shall be carried out for us for the purposes of §950 of the German Civil Code (BGB) without our incurring any obligations. If the reserved goods are processed with other items not belonging to us, we shall acquire co-ownership of the new items in proportion to the invoice value of the reserved goods to the invoice value of the other goods used at the time of processing.
6. Transfer by way of security or the pledging of goods in our ownership will be prohibited. In the event of access by third parties to the reserved goods, in particular seizure, the purchaser will make clear our ownership of the goods and notify us immediately by submitting a copy of the seizure protocol.
7. In the event of default in payment on the part of the purchaser or any other failure to meet contractual obligations, we shall be entitled to recover the goods we have shipped after we have given notice and set a period for payment. Withdrawal of the reserved goods will not constitute withdrawal from the contract. In addition, if the purchaser fails to meet its obligations by the due date, we will be entitled to liquidate the reserved goods and any other securities at any time and without any legal action while giving the utmost consideration to the interests of the purchaser. The liquidation may not take place until we have given the purchaser at least 14 days prior notice.
8. If the value of the securities granted exceeds our claims by more than 20%, we shall be obliged, at the request of the purchaser, to re-transfer or release securities of our choice.

8. Dimensions and Weight

The dimensions and weights stated in our documents and offers are approximate. Illustrations or drawings will not be binding unless they are expressly designated as such. Design and form changes of the item delivered are subject to change as long as the delivery item itself has not changed significantly and the changes are agreeable the purchaser.

9. Confidential Information and Copyright

1. Offers and documents such as plans, drawings, sketches and drafts may not be made available to third parties without our consent.
2. Ownership of and copyright pertaining to these documents shall remain our property. Ownership of plans, sketches, and drawings for fittings and other items delivered to the purchaser shall be transferred to the purchaser along with ownership of those items.

10. Place of Performance, Jurisdiction and Governing Law

1. The place of performance and the exclusive place of jurisdiction for deliveries and payments as well as for all disputes arising between the parties will be our headquarters, with the exception of consumer transactions.
2. Relations between the parties shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the UN Sales Convention.

In case of differences between the German and English version or in other cases of doubt, the German version applies.

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