

General terms and conditions of business and delivery (GTC)

ASM Steuerungstechnik GmbH

§ 1 Scope

1. These general terms and conditions apply to companies, legal entities under public law or special funds under public law (hereinafter: purchaser).
2. Deliveries, provision of services and offers of the ASM Steuerungstechnik GmbH are exclusively based on these terms and conditions. We do not recognize any terms and conditions that are contrary to or deviate from these terms and conditions unless we have expressly agreed to their validity in writing.
3. Our terms and conditions are also valid if we carry out the delivery to the purchaser with out reservation in the knowledge that the purchaser's terms and conditions are in conflict with or deviate from our terms and conditions. The purchaser's terms and conditions of business or purchase are hereby rejected.
4. Our terms and conditions also apply to all future transactions with the purchaser if they are legal transaction of the same or related kind.
5. All agreements made between the ASM Steuerungstechnik GmbH and the purchaser for executing the contract, which go beyond the GTC, have to be set in a written contract.

§ 2 Offer

1. Our offers are considered non-binding unless otherwise stated in the order confirmation.
2. We can accept an order of the purchaser, which can be defined as a conclusion of a contract, within two weeks by sending a written confirmation or by executing the contractual performance within the same period.
3. Design descriptions, illustrations, drawings, dimensions and weight or other specifications are only binding if expressly agreed in writing.
4. Design descriptions, illustrations, drawings, calculations or other specifications remain our intellectual property and copyright. They may not be made accessible to a third party unless we express our written consent.

§ 3 Payment conditions

1. Our prices are valid plus statutory value added tax.
2. We reserve the right to change our prices appropriately if, after conclusion of the contract, cost reductions or cost increases occur due to wage material and distribution costs. We will provide evidence of theses to the purchaser upon request.
3. Payments are to be made exclusively to the account specified in the invoice header. The deduction from the discount requires a written agreement.
4. If no other terms of payment are stated in the invoice, the payment shall be made within 30 days.

5. The purchaser is only entitled to offset counterclaims or to exercise a right of retention if his counterclaims have been legally established, are undiscounted or have been acknowledged by us in writing. Furthermore, the exercise of a right of retention requires that a counterclaim that has been legally established is based on the same contractual relationship.
6. All costs, fees and expenses incurred in connection with the application for, issuance, administration, renewal or late return of such a bank guarantee (including, but not limited to, processing fees, commissions, interest rates and other expenses of the issuing bank) shall be borne in full by you as the client by every started month.

§ 4 Delivery times

1. Information on delivery times is approximate, unless otherwise agreed in writing with the purchaser. Delivery periods only commence after complete clarification of all details of execution and presuppose the timely and proper fulfillment of the purchaser's obligations. In particular, the purchaser has the obligation to procure the place of performance in such a way that a smooth process is guaranteed. If this is not possible, the purchaser has the obligation to inform us in writing.
2. In case of a delivery delay not intentionally caused or with gross negligence by us the liability for damages is limited to 50% of the damage incurred. The limitation of liability does not apply if a commercial fixed-date transaction has been agreed. The same applies if the purchaser can claim that its interest in the performance of the contract has ceased to exist due to the delay for which we are responsible. The purchaser is only be entitled to claims for damages due to non-performance in the amount of the foreseeable damage if the delay is due to intent or gross negligence.
3. If the purchaser sets a reasonable period of grace with threat of refusal, after we have fallen into delay, he is entitled to withdraw from the contract after the unsuccessful expiry of this period of grace.
4. If the purchaser is in a default with the call-of, acceptance or collection of the goods, we are entitled to demand compensation for the incurred damage; the risk of accidental deterioration and accidental loss passes to the purchaser upon occurrence of the default in acceptance.

§ 5 Transfer of risk during shipping

1. If the goods are shipped to the purchaser at the purchasers request the risk of accidental loss or deterioration of the goods pass to the purchaser upon dispatch, at the latest upon leaving the factory/warehouse. This applies regardless of who pays the freight costs.
2. If shipment is delayed at the purchaser's request, the risk is passed to the purchases upon notification of readiness for delivery.

§ 6 Liability and warranty

1. Liability for slightly negligent breach of duty is excluded, provided that theses do not concern essential contractual obligations, damages from injury to life, body or health or guarantees or claims under the Product Liability Act are affected. The same applies to breaches of duty by our vicarious agents.

Apart from that, claims for damages according to §§ 380,281 BGB are excluded. If an essential contractual obligation is breached due to slight negligence, our liability is limited to the foreseeable damage typical for the contract. An essential contractual obligation is given in the case of obligations the fulfillment of which makes the proper execution of the contract possible in the first place or on the compliance with which the purchaser has relied and was entitled to rely.

2. In the event of a justified and timely notice of defect, the purchaser is entitled to subsequent performance during the warranty period; we have the right to choose the type of subsequent performance - elimination of the defect or delivery of a defect-free item.
3. The liability for material defects expires as soon as operating and maintenance instructions of the seller are not followed, changes are made to the delivered goods, parts are replaced or consumables are used that do not comply with the original specifications.
4. Only the purchaser is entitled to claims against us for defects. These claims are not assignable.
5. Claims arising from liability for material defects become statute-barred 12 months after the transfer of risk.

§ 7 Retention of title

1. We retain title to the item delivered by us until receipt of all payments arising from the business relationship with the purchaser. In the case of several claims or current account, the retention of title apply as security for the balance claim, even if individual deliveries of goods have already been paid.
2. In the event of a breach of contract by the purchaser, e.g. default in payment, we have the right to take back the reserved goods after setting a reasonable deadline in advance. If we take back the reserved goods, this constitutes a withdrawal from the contract. We are entitled to utilize the reserved goods after taking them back. After deduction of a reasonable amount for the utilization costs, the utilization proceeds are set off against the amounts owed to us by the purchaser.
3. The purchaser is obligated to treat the goods delivered by us with care; in particular, he is obligated to sufficiently insure them at his own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is required, the purchaser must carry this out in good time at its own expense.
4. In the event of seizure or other interventions by third parties, the purchaser must inform the third party immediately of the retention of title. Furthermore, he has to inform us immediately in writing so that we can file a suit according to § 771 ZPO (German Code of Civil Procedure).
5. The purchaser is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in default. Pledges or transfers by way of security are not permitted. The purchaser hereby assigns to us in full, by way of security, any claims arising from the resale or any other legal grounds (insurance, tort) with respect to the reserved goods. We revocably authorize the purchaser to collect the claims assigned to us for his account in his own name. The authorization to collect expires if the purchaser does not properly meet his payment obligations, gets into payment difficulties, compulsory enforcement measures are taken against him or judicial insolvency proceedings are opened against his assets or the opening of such proceedings is rejected for lack of assets.

6. The processing or transformation of our delivered items by the purchaser shall always be carried out for us, but without any obligation on our part. If the item delivered by us is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item delivered by us to other processed items at the time of processing. If the delivered items are combined or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivered items to the other combined or mixed items. If, in the case of combination or mixing, the purchaser's item is to be regarded as the main item, it shall be deemed to have been agreed that the purchaser shall transfer to us co-ownership of the new item on a pro rata basis. In all other respects, the same shall apply to the item created by processing, combining or mixing as to the item delivered under reservation of title. If the item delivered by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item delivered by us to the other mixed items at the time of mixing, combining or processing. If the mixing, combining or processing is carried out in such a way that the purchaser's item is to be regarded as the main item, it shall be deemed agreed that the purchaser transfers co-ownership to us on a pro rata basis. The purchaser shall hold the sole ownership or co-ownership thus created in safe custody for us. The purchaser also assigns to us the claim to secure our claims against him that arise against a third party through the connection of the item delivered by us with the property.
7. We undertake to release the securities to which we are entitled at the request of the purchaser to the extent that the realizable value of our securities exceeds the claims to be secured by more than 20%. The selection of the securities to be released is incumbent upon us.

§ 8 Place of jurisdiction and applicable law

1. This contract and these terms and conditions as well as the entire legal relationship between the purchaser and us are governed by the laws of the Federal Republic of Germany to the exclusion of all references to other legal systems and international treaties. Application of UN sales law is excluded.
2. The place of performance for all delivery obligations on our part and for the other contractual obligations of both parties is Bad Wünnenberg-Haaren.
3. Paderborn is the place of jurisdiction for all disputes arising from this contractual relationship. However, we are also entitled to sue the purchaser at his place of business. Mandatory statutory provisions on exclusive places of jurisdiction remains unaffected by this provision.

§ 9 Final clause

1. If the contract or these GTCs of Delivery contain loopholes, those legally effective provisions shall be deemed agreed to fill these gaps, which the contracting parties would have agreed to in accordance with the economic objectives of the contract and the purpose of these GTCs of Delivery, if they had known about the loophole.
2. The German-language version shall be deemed the authentic version of the GTC and shall be used to interpret the contract.