

Terms and conditions

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of GETT Gerätetechnik GmbH as of 01. February 2011

1.) General

We sell and deliver exclusively according to our conditions mentioned below, of which the validity for all present and future contract of sales is agreed upon. Conflicting conditions of purchase or other business conditions of the purchaser are not recognized by us, unless we expressly agreed in writing on their validity. Our conditions of delivery and payment do also apply if we carry out the delivery of the purchaser without reservation even though we know that the purchaser has conditions which are opposed to or deviate from our own conditions of delivery and payment.

All agreements made between us and the purchaser in order to execute this contract are set forth in writing in this contract.

Our conditions of delivery and payment apply only to entrepreneurs within the meaning of § 310 sect. 1 of the German Civil Code 1 BGB.

2.) Offers, offer documents

Our offers are subject to confirmation, unless a written individual offer states something else.

Orders of the purchaser are binding for it for a duration of 4 weeks. They may be revoked by the purchaser, if it does not receive a written order confirmation from us within these 4 weeks. With the order confirmation the order becomes binding for us. In case of immediate delivery the invoice serves at the same time as an order confirmation.

We reserve property rights and copyrights for cost estimates, images, drawings, calculations and other documents. This applies also to written documents designated as "confidential". Before passing them to third parties, the purchaser is required to obtain our express written consent. If a cost estimate is desired before repair works are carried out, this shall be expressly specified. The costs for the cost estimate shall be remunerated.

If an order for the creation of customer-specific solutions is placed, the purchaser assures that all documents, drawings and samples provided to us as part of commissioning, are free of rights of third parties.

3.) Make-and-hold orders

If in case of make-and-hold orders not all delivery dates are determined it shall be deemed agreed that the entire order volume is taken by the purchaser within a year after the date of order confirmation at the latest. Agreements deviating from this "make-and-hold order provision" are confirmed by us in writing with the order confirmation.

4.) Delivery time

The beginning of the delivery time indicated by us requires the clarification of all commercial and technical issues. The adherence to our delivery commitment requires furthermore the timely and proper fulfillment of all obligations of the purchaser. The objection of the non-fulfilled contract remains reserved to us.

If the purchaser is in default of acceptance or if it culpably violates other obligations to co-operate we are entitled to claim compensation for the damages caused in this respect, including possible additional expenditures. Further claims remain reserved.

Changes desired by the purchaser may cause an extension of the delivery period. The delivery period is adhered to if until its expiry the delivery item has left the factory or readiness to dispatch was communicated.

In case of default in delivery the purchaser does only have the right to withdraw, after having set a reasonable grace period.

Further claims, in particular for damage compensation, are excluded.

Return consignments of any kind can only be accepted if the return merchandise authorization number issued before can be clearly recognized on the package's packaging. Consignments of any kind which are not prepaid are not accepted without our prior, written consent.

5.) Modification of the technical specification

We reserve modifications serving the technical progress without separate notice.

In case of customer-specific products we will carry out modifications serving the technical progress only upon prior coordination with the purchaser and if a corresponding written agreement is available.

6.) Prices, dispatch, packaging and insurance

Unless otherwise agreed, our prices are net ex one of our warehouses in the Federal Republic of Germany excluding packaging, freight, expenses and transport insurance. They are separately specified on the invoice. Pricing and invoicing is carried out in EURO. In case of changes in costs and in case of exceedance of the contract period of a make-and-hold order after conclusion of the contract attributable to the customer, we reserve the right to adapt the prices accordingly.

Dispatch is carried out at our discretion and without warranty for the cheapest shipping method.

Packaging can be returned to us at the expense of the customer unless return of the cardboard packaging marked with the RESY label by local material dealers is preferred. The carrier is not a distributor and cannot be expected to return packaging.

At the request of the purchaser we will cover the delivery with transport insurance; the costs incurred in this respect are borne by the purchaser.

7.) Transfer of risks

The risk is passed to the purchaser upon handover of the goods to the freight carrier selected by us. Partial deliveries shall be permitted.

8.) Conditions of payment

As a basic principle we deliver for cash in advance or cash on delivery. In case of positive information of our trade credit insurance, delivery may be carried out on open account at our discretion. Our open accounts are due net cash in the amount of the invoiced amount without any deduction, exempt from postage and charges immediately after the invoice was received. A longer term of credit or discount is granted if this is expressly agreed at invoicing.

In case of calculation in a foreign currency we are entitled to claim, instead of the invoice sum, the amount which is required to reach the amount in EURO which arises when taking the exchange rate as a basis plus the common bank charges for foreign bank transfers at the day of order confirmation. Payments are met when we have the full amount at our disposal.

In case of exceedance of the term of credit we charge interests payable after the due date in the amount of eight percentage points above the respective base interest rate according to § 247 of the German Civil Code BGB p.a.

The purchaser is only entitled to offsetting if its counterclaims have been determined without further legal recourse, are undisputed or accepted by us. Furthermore it is entitled to exercise its right of retention if its counterclaims are based on the same contractual relationship.

We are entitled to check the creditworthiness of customers with the commonly used means; if doubts regarding the creditworthiness of the customer arise or if a considerable deterioration of the financial circumstances of the business partner occurs, we are entitled to revoke granted terms of credit and to carry out further deliveries against cash in advance or cash on delivery only. In addition, granted terms of credit become invalid and all claims of us become due immediately if the business partner is in delay with a due performance, does not encash checks and other rights, revokes direct debit authorizations granted to us or files for insolvency. In such cases we are entitled to fetch back goods already delivered as a precaution, also without withdrawing and without setting a grace period at the expense of the customer.

9.) Retention of title

The goods remain our property until all payments of the delivery contract are received. If the customer behaves contrary to the contract, in particular in case of default of payment, we are entitled to take back the purchase item. By taking back the purchase item, we withdraw from the contract. After taking back the purchase item we are entitled to make use of it. The amount realized from the utilization shall be taken into account to the liabilities of the purchaser – less reasonable utilization costs. If the goods under retention of title are processed or transformed we gain co-ownership of the new object proportional to the value of the purchase object (final amount of invoice, including value added tax) to the other processed objects at the time of processing. Apart from that, the same things apply to the object created by processing as for the purchase item delivered under retention.

The purchaser is entitled to resell the goods under retention in the course of proper business operations. The receivables from the resale are passed to us to the amount of our total receivables from the business connection. We can require at any time that the purchaser discloses the name of the buyer to us and we are entitled to inform the buyer about the subrogation and to collect the receivable directly at the buyer in case of default of payment. As long as the retention of title exists, the purchaser is not entitled to pledging or assignment as security.

10.) Offsetting of costs for modifications, tools and developments

No property claim of the purchaser regarding the design of products, the tools or intellectual property arises from the costs charged by us to the purchaser for product modifications, tools or developments of any kind. Agreements deviating from this are made by us in writing only with the order confirmation. Tools which are already property of the purchaser and are used by us remain property of the purchaser.

11.) Warranty, limitation of liability and repairs

Claims for defects on the part of the purchaser require that it fulfilled in proper form its inspection and notification duties which are due according to § 377 of the German Commercial Code HGB.

Unless otherwise agreed in writing, warranty claims become time-barred within 24 months from handover of the goods to the freight carrier (transfer of risks). If there is a defect of the product we are entitled at our own choice either to supplementary performance in the form of removal of defects or to deliver a new object free of defects.

Defects are excluded from the warranty, if interventions on delivered components/devices were carried out by persons not authorized by us. In particular, we are not liable for damages resulting from incorrect installation, operating errors and external influences. Warranty is also inapplicable, if the serial number of a delivered component/devices is irre recognizable or respective safety marks were removed or destroyed.

We are liable according to the legal requirements if the purchaser asserts claims for damages which are based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. Unless we are accused of intentional breach of contract, the liability for damage compensation is limited to the foreseeable, typically occurring damage. We are liable according to the legal requirements if we culpably violate a material contractual obligation; however, in this case the liability for damage compensation is limited to the foreseeable, typically occurring damage. Liability for culpable injury to life, body or health remains unaffected; this also applies to mandatory liability in accordance with the product liability act.

Unless otherwise agreed in the above-mentioned, liability is excluded.

Parts which are subject to rapid wear due to their material condition or due to their use, for example indicating lamps, fuses, switches and printheads are excluded from liability as well as all damages caused by extraordinary loads like arcs, radiation exposure, electrostatic and electromagnetic interfering fields, environmental influences and operating conditions etc.

The data indicated in our printed or electronic documentations are non-binding information and do not represent an assurance of properties. Errors and changes of the product range and the prices are reserved. All indicated brand names are the property of the respective companies.

12.) Additional conditions for development orders

a) Subject matter of the order

The subject matter of a development order results from the content of the written order confirmation. A development order placed with us becomes binding for us with a respective written order confirmation only.

b) Execution of the order

The principal is obligated to contribute to the successful implementation of the development order and in particular to provide all documents, own knowledge of the principal as well as experiences etc. which we need in connection with the implementation of the development order.

c) Development success

We are not responsible for the development success of the respective order if it cannot be achieved or cannot be achieved completely for reasons which were not recognizable for us at the time of contract conclusion or which occur after contract conclusion and belong to the area of responsibility of the principal.

d) Costs and duration of the development order

If we realize that the development order cannot be executed within the agreed time and/or at the agreed remuneration, both contracting parties shall agree on an additional regulation regarding the continuation of works and the bearing of the costs. If no agreement can be reached concerning this matter we are entitled to cancel the development order and to receive the corresponding part of the accrued development expenditure of the originally agreed price.

e) Confidentiality, disclosure

Also upon termination of the development order we will not disclose to third parties any information marked as confidential provided to us by the principal on the occasion of order placement or for the execution of the development order, if and to the extent to which they are not generally known. The principal is obliged towards us to maintain confidentiality in the same manner.

The principal may disclose development results mentioning the author if this is agreed upon in advance with us, unless in individual cases there are conflicting reasons (e.g. if the property rights registration is at risk). If disclosure is carried out for the purpose of advertising the author must not be mentioned upon our request.

13.) Agreement on the take-back obligation of the manufacturer according to §10 sec. 2 of the German act on electric and electronic devices

The purchaser assumes the obligation to dispose of the delivered goods in a proper way at its own expense after termination of use according to the legal requirements. The purchaser exempts us from the obligations according to §10 sec. 2 of the German act on electric and electronic devices ElektroG (take-back obligation of the manufacturer) and related claims of third parties.

14.) Note on data

We store personal and company-related data in the context of business relations and process them within our company.

15.) Choice of law, place of performance, place of jurisdiction

All contractual agreements are subject to German law.

Place of performance is the registered office of GETT Gerätetechnik GmbH.

Place of jurisdiction for business people is the registered office of GETT Gerätetechnik GmbH.

Treuen (Vogtland), 1st February 2011

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