

Terms of delivery

I. Quotation

As far as not expressly marked as binding, the documents belonging to the quotation, such as illustrations, drawings, weight- and dimension data, are only approximately decisive. If not separately mentioned, the specified values, e.g. gas velocities, temperatures, data of the units to be de-dusted, are based on assumptions and/or experiences similar to applications known to us. The accuracy of quoted scope of supply refers to the assumed values.

II. General

1. All deliveries and services are based on these terms and possible, separate contract agreements. Even in case of acceptance of order, deviating purchase conditions of ordering party will not become terms of the contract.
In the absence of a special agreement, a contract will be concluded through the written order confirmation of supplier.
2. The supplier reserves the right of ownership and proprietary as regards estimates of costs, drawings and other documents of material and immaterial type - even in electronic form; they may not be made available for a third party.
The supplier obligates not to hand over to a third party any information and documents marked as confidential by the ordering party without previous authorisation.

III. Price and payment

1. In the absence of a special agreement, the prices have to be understood ex works, including loading at works, but without packing. The prices apply excluding VAT in the corresponding legal amount.
2. In the absence of a special agreement, payment has to be effected on account of supplier without any deduction and that:

1/3 down payment after receipt of order confirmation,
1/3 as soon as the ordering party has been informed that the goods are ready for dispatch,
the residual amount within one month after passing of the risk.
3. The ordering party only has the right to withhold payments or to set them off against counter-claims, if his counter-claims are undisputed or legally recognised.

IV. Delivery time, delays in delivery

1. The delivery time results from the agreements of contract parties. The observance of delivery time through the supplier is subject to the clearance of all commercial and technical issues between the contracting parties and whether the ordering party has fulfilled its obligations, as. e. g. provision of necessary statutory certificates or permits or the settlement of a down payment. If this is not the case, the delivery time will be extended appropriately. This will not apply if the supplier is responsible for the delay.
2. The observance of delivery time is subject to correct and early self-supply. Emerging delays have to be communicated immediately by the supplier.
3. The delivery time is deemed to be observed if the delivery item has left the manufacturing shop of supplier until its expiry or if the readiness for dispatch has been communicated. As far as an acceptance has to take place, the date of acceptance will be decisive – except for justifiable refuse of acceptance -, alternatively the notification of readiness for acceptance.
4. In case the dispatch and/or the acceptance of delivery item will be delayed due to reasons the ordering party is responsible for, the orderer will be charged with the costs resulting from the delay, starting one month after notification of readiness for dispatch and/or acceptance.
5. In case the non-observance of delivery time is due to force majeure, to industrial conflicts or other incidents beyond the supplier's control, the delivery time will be extended reasonably. The supplier will inform the orderer about the beginning and the ending of such incidents as soon as possible.
6. The ordering party can withdraw from the order without fixing a deadline if the supplier is finally not able to render the complete services prior to passing of the risk. Furthermore, the orderer can cancel the purchase if in the scope of the order the execution of one part of the delivery becomes impossible and if he has a legitimate interest in the refuse of the part delivery. If this is not the case, the orderer has to pay the contract price for the corresponding part delivery. The same applies in case of inability of supplier. For the rest clause VIII 2 applies.

If the impossibility or the inability occurs during the delay in acceptance or in case the orderer is solely or predominantly responsible for this, he will remain obliged to consideration.

7. If the supplier falls behind, thus causing damage to the orderer, this one is entitled to claim for global compensation for damage resulting from the delay. The amount totals for each complete week of delay to 0.5% - but limited to in total 5% - of the value of the part belonging to the overall delivery that cannot be used in time or according to the contract due to the delay. All further claims are excluded.

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If after due date the orderer sets the supplier a reasonable time limit for performance – considering the legal exceptional cases – and if this time limit will not be observed, the ordering party is entitled to withdraw within the scope of statutory provisions.

V. Passing of the risk, acceptance

1. The risk passes over to the ordering party when the delivery item has left the manufacturing shop and that also in case of part deliveries or if the supplier has taken over other services, e.g. the shipping costs or delivery and installation. As far as an acceptance has to take place, this will be decisive for the passing of the risk. It has to be realised immediately at the contractually agreed date for acceptance, alternatively after notification of supplier about readiness for acceptance. The orderer may not refuse acceptance in case of presence of a non-essential defect.
2. If due to circumstances the supplier is not responsible for, the shipping and/or the acceptance will be delayed or remain undone, the risk passes over to the ordering party starting from the date of notification of dispatch and/or acceptance. The supplier obligates to take out the insurances requested by and on the expenses of the orderer.
3. Part deliveries are admissible.

VI. Reservation of owner's title

a) Simple reservation of owner's title

1. The supplier reserves the title of delivery item until receipt of all payments – also for possible, additional owing ancillary services – in the scope of the delivery contract.
2. The supplier is entitled to take out an insurance against damages due to theft, breakage, fire, water and other damages on the expenses of orderer, as far as the orderer himself did not provably contract a corresponding insurance.
3. The orderer may not sell, pledge or assign the delivery item for the purpose of securing a debt. In case of levy of execution as well as seizure or other provisions by a third party, the orderer has to inform the supplier immediately.
4. In case of breach of contract by the orderer, particularly in case of delay in payment, the supplier has the right of taking back the delivery item after reminder and the orderer is obliged to return.
5. The petition in bankruptcy entitles the supplier to withdraw from the contract and to demand the immediate return of delivery item.
6. In case of connection with personal properties, the orderer grants the supplier a proportionate share in ownership. The height of share is fixed in accordance with § 947, clause 1 BGB.

b) Extended reservation of owner's title

LUEHR FILTER GmbH, Stadthagen, reserves the right of title of delivery item until settlement of all demands of supplier on the orderer in the scope of the business connection, including demands arising in the future from simultaneously or later concluded contracts. This is also valid if separate or all claims of supplier are added to a current invoice and the balance has been struck and approved. If the orderer behaves contrary to the contract, particularly in case of delay in payment, the supplier has the right to take back the delivery item after reminder and the ordering party is obliged to surrender. As far as the gradual payment law is not applied, taking back as well as mortgage of item by the supplier does only present a withdrawal of contract, if the supplier declares this expressly in writing. In case of mortgage or other interventions of a third party, the orderer has to inform the supplier immediately in writing.

The orderer is entitled to resell the delivery item in ordinary course of business. However, he will already now assign all claims on the buyer or on a third party, arising to him from the resale, irrespective of whether the good with retention of title will be resold without or after processing. The orderer is authorised to collect these debts, even after assignment. The power of supplier to collect the debts himself remain unaffected hereof, but he undertakes not to collect the debts, as long as the orderer duly fulfils his obligations to pay. The supplier may demand from orderer information about the assigned claims and the corresponding debtors, to submit all data necessary for the collection and the belonging documents and to inform the debtor about the assignment. If the delivery is resold together with other goods, not belonging to the supplier, the demand of orderer on the buyer is considered to be transferred in the height of the delivery price agreed between supplier and orderer.

The processing or modification of items delivered under reservation of title is always realised for the supplier by the orderer. If any such reserved items are processed with other goods, not belonging to the supplier, the supplier acquires the co-ownership of the new good in the ratio of value of reserved item to the other processed items at the moment of processing. For the product resulting from the processing applies the same as for the item delivered under reservation of title.

The supplier undertakes to release the securities due to him to such an extent, as their value exceeds the claims to be assured by more than 25 %, as far as these ones have not yet been settled.

In case the orderer has already pledged the claims regarding this scope of supply on customer at the moment of order award or if he has assigned them to a third party, the supplier has to be informed about this in writing at the moment of order award at the latest.

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VII. Warranty claims

Regarding defects as to quality and title of delivery and excluding all further claims – subject to clause VIII - the supplier accepts warranty as follows:

Liability for defects

1. All parts that turned out to be defective due to an incident happened prior to the passing of the risk, have to be repaired or replaced faultlessly according to the choice of supplier and without any charges. The supplier has to be informed immediately and in writing about the detection of such defects. The supplier becomes the owner of replaced parts.
2. In order to allow all repair works and replacement deliveries deemed to be necessary by supplier, the orderer – after agreement with the supplier – has to grant a reasonable time and opportunity for this; otherwise the supplier will be dispensed from liability for the consequences resulting hereof. Only in urgent cases of risk regarding the operational safety and/or to hold off disproportional damages, in case of which the supplier has to be informed about immediately, the ordering party has the right to remedy the defect by himself or have it removed by a third party and to demand compensation of necessary expenses from supplier.
3. Regarding the direct costs resulting from the repair and/or replacement delivery, the supplier – as far as the complaint proves to be justified – will bear the costs of spare part including the shipping costs. He will also bear the costs for the dismounting and mounting as well as the costs for the possible provision of necessary technicians and assistants, including the travel costs, as far as this will not result in an unreasonable financial burden for the supplier.
4. In the framework of statutory provisions, the orderer has the right to withdraw from the contract if the supplier – considering the legal exceptional cases – has failed to observe the reasonable deadline for the repair or replacement delivery due to a defect as to quality. In case of a more unimportant defect, the orderer only has the right to reduce the contract price. Apart from that the right to reduce the contract price remains excluded.
5. Particularly in the following cases no warranty will be accepted:
Unqualified and improper use, faulty installation and/or commissioning through the orderer or a third party, natural wear, faulty or careless handling, improper maintenance, unsuitable utilities, poor civil works, inappropriate building ground, chemical, electrochemical or electric influences – as far as the supplier is not responsible for.
6. In case of unqualified touching up by the orderer or a third party, the supplier cannot be held responsible for the consequences resulting hereof. The same applies in case of modifications of delivery item realised without previous authorisation of supplier.

Legal imperfection in title

7. If the use of delivery item leads to an infringement of industrial property rights or of proprietary rights in the home country, the supplier will as a matter of principle and on his own expenses, provide the right of further use for the orderer or will in reasonable way for the orderer modify the delivery item in such way that the infringement of industrial property rights will no longer exist. In case this will not be possible at economically fair conditions or within reasonable time, the ordering party is entitled to withdraw from the contract. The stated conditions provided, the supplier also has the right of cancellation.

Furthermore, the supplier will indemnify the orderer from undisputed claims or claims that are established final and absolute, submitted by the corresponding proprietor of industrial right.

8. The obligations of supplier stated in clause VII 7 are – subject to clause VIII 2 – concluding in case of infringement of industrial property rights or of proprietary rights.

They will only apply if

- the orderer informs the supplier immediately about claimed infringements of industrial property rights or proprietary rights,
- the orderer supports the supplier in reasonable extent in the defence against enforced claims and/or allows the supplier the realisation of modification measures according to clause VII 7,
- the supplier reserves to take all defensive measures including out of court settlements,
- the defect of title is not based on the instruction of orderer
- the defect in title is not due to the unauthorised modification or contract breaching use of delivery item by the orderer.

VIII. Liability

1. If due to the fault of supplier resulting from omitted or faulty execution of proposals or consultations made or carried out prior to or after conclusion of contract or due to infringement of other contractual additional obligations – particularly control and maintenance instructions for delivery item – the delivery item cannot be used by the order in conformity with the contract, the provisions of clause VII and VIII 2 will apply accordingly, excluding further claims by orderer.
2. Regarding damages which have not been caused to the delivery item itself, the supplier will – for whatever reason – only be held responsible for in case of
 - a) deliberate intention
 - b) gross negligence of owner/agency or chief executives
 - c) slightly negligently caused damages to property and financial losses, however only in case of infringement of an essential contractual obligation, the height of it however being limited to foreseeable damages, typical for the contract
 - d) culpable injury of life, body and health
 - e) defects, maliciously kept secret
 - f) defects of delivery item, as far as liability is incurred for damages to persons and property at privately used items according to the product liability law.

In case of culpable infringement of essential contract obligations, the supplier will also be held responsible for gross negligence of non-executive employees and in case of slight negligence, in the latter case limited to the reasonably foreseeable damage, typical of contract.

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3. The liability for all damages – irrespective of whatever reason – is limited to 50 % of the order value, except for damages covered by insurance and damages due to gross negligence or deliberate intention.

Excluded from the liability are indirect damages such as loss in production and of profit etc.

IX. Limitations of actions

All claims of orderer – for whatever legal reason – will become statute-barred in 12 months. In case of claims for damages according to clause VIII.2 a – e, the legal statutory periods will apply.

X. Use of software

As far as software will be included in the scope of supply, the orderer will be provided with the non-exclusive right of use of the supplied software, including the belonging documentation. It is made available for the use with the corresponding delivery item. Using the software for more than one system is prohibited.

The orderer may only copy, revise, translate or convert the software from the object code into the source code according to the legally admitted extent (§§ 69 a ff UrhG). The orderer obligates himself not to remove or change - without previous expressive agreement of supplier – manufacturer information, especially copyright notes.

All other rights regarding software and documentations, including corresponding copies will remain in the hands of supplier and/or software supplier. Awarding of sub-licences is not admitted.

XI. Applicable law, venue

1. With regard to all legal relationships between supplier and orderer, the law of the Federal Republic of Germany, decisive for the legal relationships among domestic parties, is exclusively applicable.
2. Legal venue is the court responsible for the domicile of supplier. However, the supplier is entitled to take action at head office of orderer.