



General Conditions of Trade

AMK Arnold Müller GmbH & Co. KG · 73230 Kirchheim/Teck

Article 1 - Application

1. Our general conditions of trade will apply to the exclusion of all others. They will apply in relation to persons carrying on business (as recognised by § 14 German Civil Code), corporate bodies and other entities recognised under public law. Conditions of trading of a contractual partner which differ from ours are not binding on us except insofar as we have accepted them in writing. Our general conditions of trade apply even in a case where in knowledge of a contractual partner's different general conditions of trade we have made supplies to such other partner without rejecting them.
2. All conclusions which are made between us and the customer respectively this contract have to be laid down in writing, especially the giving of guarantees and the cancellation of the written form. Oral agreements are void.
3. These general conditions of trade will apply also in any future contracts with the customer, even though they are not mentioned explicitly at their conclusion.

Article 2 - Offers, executions and contents of contract

1. Our offers do not constitute legally binding offers. If a contract is offered to us we may accept it within four weeks.
2. Samples and documents, for example brochures, catalogues, illustrations, drawings, technical data, weights, measurement and size specifications, are only general indications, unless they are expressly indicated as being binding.
3. Cost indications for work performances have to be paid.
4. We reserve the property rights and copyrights relative to illustrations and drawings, calculations and other files and documents; they may not be disclosed to any third party. This especially applies to those files and documents that are labeled "confidential"; our customer undertakes to obtain our explicit written consent prior to disclose to a third party. Offences obligate to claim for damages and entitle us to the withdrawal from any concluded and not fulfilled contracts.

Article 3 - Prices, terms of payment, early payment, withdrawal from contract, delay, taking back, retention, setting-off, counterclaim, prohibition of assignment

1. Insofar as the confirmation of order does not state otherwise, all prices are ex works, excluding packing, freight, insurance, duties, fitting, foreign taxes etc. as agreed plus current VAT for orders. Concerning export deliveries the VAT is not applicable, in case the export deliveries are exempt from VAT. For pallets the lending fee is charged. In case of an agreed delivery, the delivery takes place ex curb upon the agreed unloading point. In this case, for unloading, the customer is obliged to provide the necessary personnel and tools on his own costs.
2. Goods or services ordered will be priced according to the price list valid on the day of the order. If the installation, assembly or putting into service is agreed, also the prices valid on the day of the order are valid. Should purchase prices rise between order being placed and delivery, especially for raw materials like copper, aluminium, steel, we reserve the right to pass the additional cost on.
3. In the absence of agreement to the contrary every payment must be made in full within 30 days of the date of the invoice. 2 % discount shall be given for payment within 10 days upon receipt of the invoice.
4. We are under no obligation to accept payment by cheque or bill of exchange. Should we accept the same this is on account of performance. The costs for seizure and discounting are borne by the customer.
5. In case, during partial payment, the customer gets into default of at least two installments we are entitled to accelerate maturity regarding to the entire demand. This also applies to cases in which bills of exchange or cheques had been taken in before, which will in these cases be given back against cash payment.
6. If an essential change or deterioration of the customer's economical situation occurs after the execution of the contract, which endangers our claim for payment, or if said situation already existed for the customer at the time the contract was executed but did not become known until afterwards, we may refuse performance until payment has been made. This particularly applies to cases in which unsuccessful execution proceedings, protest against a bill of exchange or a cheque, a petition for insolvency filed by the customer, moratorium endeavours, liquidation or such have been undertaken. In these cases we may offer the customer a deadline for payment or for a provision of security. Insofar as the payment or the security is not provided despite the deadline, we have the right to withdraw from the contract.
7. If a customer is overdue with payments we have the right, if a period of grace is not dispensable according to the law, to reclaim goods after expiry of a period of grace set by us and for that purpose to enter the customer's premises and remove goods from them. We may also prohibit the customer from dispatching onward goods which have already been delivered to it.
8. Where goods delivered by us are reclaimed these goods - with an appropriate discount- will be credited to the customer maintaining other claims for compensation and their account adjusted accordingly. The customer will have the right in any particular case to demonstrate that the loss in value is not as much as the discount.
9. Only recognised debts or debts which are the subject of enforceable legal judgments can be set against amounts due to us. Debts due to us may not be reduced by set off or counterclaim. The customer is only entitled to make retentions insofar as they are based on claims arising out of the same contract.
10. So far we can demand the payment of damages instead of performance or we admit a cancellation of order, it is agreed a damage-overall of 25 % of the order sum. The customer is entitled to prove that we have sustained a lower damage. The assertion of a higher damage is not excluded by this regulation.

Article 4 - Freedom of performance, delivery time, partial delivery, withdrawal, damages caused by delay, callable orders

1. We reserve the right to a timely and correct delivery in relation to us, except insofar as we do not have given a guarantee for a performance, furthermore, insofar as we do not have assumed the risk of supply.
2. The commencement of the delivery times set by us assumes that the arrival of all documents, permissions, releases and any further information, which have to be brought by the customer, the clarification of any details of the order, especially all technical questions and the receipt of any agreed pre-payments. This also applies for assembly performances. Partial deliveries are permissible insofar as they are reasonable. The delivery time is considered as observed, if the delivery object has been sent at the delivery date or, if it is, without our fault, not possible to dispatch, by inform the customer of the readiness of the sending.
3. We are not responsible for delays in deliveries due to force majeure or through circumstances for which we are not to blame, including traffic and transport disturbances, interruption of operations, strikes, blockages, lack of raw materials and war, except insofar as we do not have given a guarantee for a performance, furthermore, insofar as we do not have assumed the risk of purchase / supply.
4. In the event that due to circumstances according to subparagraph 3 we cannot make deliveries within the agreed time delivery time will be extended as necessary. If a delivery problem for which we are not responsible such as is mentioned in subparagraph 3 continues beyond the extra delivery time we have the right to withdraw from the contract.
5. If we cannot make delivery within the agreed time the customer is obliged on our request within a reasonable period to elect whether he still wishes to take delivery or whether he will withdraw from the contract insofar as this is possible and/or demand compensation instead of performance. If he fails within a reasonable time to make this election we are entitled to withdraw from the contract.
6. If we experience a delay in delivery, the following shall apply:
 - a. If there is a fixed date for delivery or if the customer can prove that his interest in the fulfillment of the contract has ceased or if the delay is caused by an intentional contract violation for which one of us, our representatives or vicarious agents can be held responsible, we will be liable for any damages caused by such a delay in accordance with legal provisions.
 - b. If we, our representatives or our vicarious agents have violated an essential contractual obligation and if there is no liability according to legal provisions in regards to subparagraph a., our liability for damages caused by default will be limited to predictable and typical damage.
 - c. In any other cases our liability for damages caused by delay will be limited to a maximum of 5 % of the value of goods.
 - d. The customer's other legal claims are not excluded hereby.
 - e. The foregoing provisions are not connected with a reversal of the burden of proof.
 - f. The customer has to call off callable orders within the agreed time – the latest within one year. In case the customer gets into default of calling off the order longer than one month we are entitled to deliver the remaining quantity.

Article 5 - Risk, delivery, assembly

1. Insofar as the contrary is not stated in the confirmation of the order, delivery is "ex-works". The dispatch always takes place at the expense of the customer, even when delivery is from a different place than the place of performance, and at the risk of the customer, even when the dispatch is free of charge and /or takes place by own personnel or vehicles.
2. If delivery by us is agreed, the customer has to provide competent personnel and necessary technical equipment (e.g. stacker) in time to ensure a smooth unloading. It is presupposed that the vehicle can directly approach the unloading place and can be unloaded immediately. If these conditions are not given, thereby occurring costs will be extra charged.
3. At the receipt of goods any transport damages have to be announced against certificate to the railway, the post office, to the carrier or the deliverer.
4. Insofar as the customer wishes we will arrange insurance for carriage; the customer bears the cost there of.
5. As far as the assembly by us is agreed, the following applies:
 - a. The customer has to provide that the assembly can be started immediately after the arrival of the mechanic and can be carried out and finished without delay. Otherwise he has to bear the costs for the waiting period and for any additionally necessary journeys of the assembly personnel.
 - b. At the place of assembly the customer has to provide rooms, which are sufficient large, suitable, dry and lockable, for the safe keeping of the object of purchase as well as for the further articles, materials and tools needed for the assembly. Besides, he has to take the same measures for the protection of our possession and of the assembly personnel which he would take for the protection of his own possession. Furthermore, the customer has to place appropriate workrooms and lounges for the assembly personnel including sanitary facilities appropriate under the circumstances.
 - c. The customer has to create conditions, which enable trouble free and unhindered work of the mechanics and under which the mechanics not bear risks for their health. Any protective clothing and safety devices necessary for the protection of the mechanics or for technical reasons have to be provided by the customer. The mechanics have to be informed about all local circumstances and conditions relevant for the security of persons and objects, in particular concerning works on existing plants, as well as on structural alterations.
 - d. The customer bears the costs for providing the conditions according to subparagraphs a. - c.

Article 6 - Warranty against defects

- Regarding quality, quantity and performance the commercial guidelines apply.
- Products are to be examined by customers without delay after delivery, insofar as it is common practice. Notice must be given to us without delay if there is any defect. If the customer fails to give the notice the delivery is deemed to have been accepted unless the defect is such that it could not be discovered upon examination. Should such a defect later come to light notice must be given without delay after discovery in absence of which the goods are deemed to be accepted notwithstanding this defect. Clause 377 of the German Code of Commerce (HGB) apply. The customer's obligation to check the goods remains even in the case of a recourse by the company in accordance with paragraph 478 of the German Civil Code (BGB). If he fails to immediately report the defect claimed by his customer, the goods will be considered as being approved despite the defect.
- Where there is a failure we have the right to decide how it is to be put right taking into consideration the nature of the failure and the requirements of the customer. If remedial work is still required after 3 unsuccessful attempts it may be regarded as failed. This subparagraph does not apply in the case of a recourse according to paragraph 478 of the German Civil Code (BGB).
- In connection with remedial work for failures we will have no obligation to bear the costs which arise, in particular (but without limitation) transport, travel, work and material costs, insofar as these have been increased because the product has been transported to another place from the premises or place of business of the customer to which it was delivered. This subparagraph does not apply in the case of a recourse according to paragraph 478 of the German Civil Code (BGB).
- Warranty claims are not in force in the case of only insignificant deviations from the owed condition or only insignificant impairment of usefulness. Warranty claims are not in force in the case of not reproducible software faults.
- Any claims based on defects including damage claims become invalid after one year. This does not apply in case of a recourse according to paragraph 478 of the German Civil Code (BGB). Besides, this does not apply in cases of paragraph 438 subparagraph 1 No. 2 and 634a subparagraph 1 No. 2 of the German Civil Code (BGB). This does not apply either to claims for damages because of injury of life, body or health or because of a gross negligent or deliberate neglect of duty by us or our vicarious agents.
- The sale of used goods takes place to the exclusion of any warranty claims.

Article 7 - Liability for compensation of damages

- In case we are liable for compensation of damages, the following shall apply:
 - Insofar as the claims are based on an intentional violation of an obligation for which we, our representatives or our vicarious agents may be held responsible, we shall be liable for compensation of damages according to legal provisions. If the claims are based on a grossly negligent violation of an obligation by us or our representatives or vicarious agents, our liability shall be limited to predictable and typical damage.
 - Insofar as we or our representatives or vicarious agents have violated any fundamental contractual or cardinal obligation and there is no liability according to the legal provisions regarding subparagraph a, liability shall be limited to predictable and typical damage.
 - Insofar as no other provisions have been made under a. and b., our liability for compensation of damages is excluded.
- The exclusions and limitations of liability under subparagraph 1 shall also apply to any other claims, in particular claims in tort or claims for recompensation for unsuccessful expenditures instead of performance.
- The exclusions and limitations of liability under subparagraph 1 shall not apply to any existing claims in tort in accordance with paragraphs 1 and 4 of the German Product Liability Law or due to culpable injuries to life, body or health. The exclusions shall not apply either insofar as we have given a guarantee for the quality of our goods or of a performance or have assumed the risk of supply and if the case of guarantee has arisen or the risk of supply has realized.
- As far as our liability is excluded or limited, this also applies to the personal liability of our employees, staff members, representatives or vicarious agents.
- Special provisions for damages due to delay have been made under Article 4, subparagraph 5.
- The foregoing provisions are not connected with a reversal of the burden of proof.

Article 8 - Supplementary and diverging provisions for international contracts

- If the customer's establishment is located outside the Federal Republic of Germany, the following provisions apply:
 - We are not responsible for the validity of the use of the supplied goods presupposed after the contract according to regulations of the recipient country. We are not responsible either for taxes resulting there.
 - We are not responsible for delivery obstacles released by national measures, in particular restrictions of import or export.
- If the customer's establishment is located outside the Federal Republic of Germany and if the convention of the United Nations on contracts regarding the international purchase of goods (CISG, Vienna UN Convention on the International Sale of Goods) in its current version applies, the following provisions also apply:

Instead of Articles 6 and 7 the following applies:

 - We shall be liable for compensation of damages to the customer according to legal provisions only insofar as a violation of the contract is based on an intentional or grossly negligent violation of the contract for which one of us, of our representatives or vicarious agents may be held responsible. We shall also be liable according to legal provisions if we violate an essential contractual obligation. The above limitation to liability does not apply to any possibly applicable claims in accordance with paragraphs 1 and 4 of the German Product Liability Law or to claims for injuries to life or body of an individual caused by the goods.
 - If any delivered goods are contrary to the terms of the contract, the customer has the right to cancellation of the contract or a substitute delivery only if any claims against us for compensation of damages are excluded or if it is unreasonable to demand from the customer to use such goods contrary to the terms of the contract and to assert his claims for the remaining damage. In these cases we are entitled to first remove the defect. If the removal of the defect fails and/or leads to an unreasonable delay, the customer shall be entitled to choose whether he wants to terminate the contract or demand a substitute delivery. The customer shall also be entitled to this if the removal of defects causes any unreasonable discomfort or if the recompensation for any possible expenditures by the customer is uncertain.

Article 9 - Retention of Title

- Property in goods delivered remains ours until receipt of all payments under the contract and in cases where there is a running account so long as anything is outstanding on such account. This also applies when our invoices are included on a running account and the balance is struck and accepted, besides regarding future claims.
- The customer is under obligation to handle goods that have been delivered with care and to store them in accordance with the special requirements of such goods. He is under the further obligation to insure them for their replacement value at his own cost against fire, flood and theft.
- Should goods be seized by third parties claiming liens or other rights the customer must let us know immediately in writing so that we can raise a claim under clause 771 of the German Civil Process Order (ZPO). Insofar as such third party does not indemnify us for the costs (whether for court or out of court costs) arising in connection with a claim under clause 771 of the Civil Process Order (ZPO) the customer is liable to us for the amount thereof.
- The customer may make onward sales of and use delivered goods (which in this clause means goods that have been delivered by us subject to this clause) in the ordinary course of business. He is however deemed to have assigned to us all claims which accrue to him from such onward sale or transmission of goods against the acquirer thereof or other third party to the extent of the value of the goods in question with all rights arising in priority before all others and such assignment is irrespective of whether the delivered goods have been sold onward before or after further work has been done on them. The amount of our invoice is deemed to be the value of the goods including VAT. If the onward sold goods are jointly owned the assignment of the claims extends to that part thereof which corresponds to our share in the property. The customer is not entitled to make any further alienation of the goods particularly (without limitation) by way of pledge or security.
- The aforementioned assignment shall not prevent the customer from taking steps to obtain payment of his claims. Our rights over such claims are not affected thereby. We are not entitled however to take steps to obtain payment of the claims ourselves so long as the customer fulfills his payment obligations as and when they arise, is not overdue with payments and in particular no steps are taken to commence an insolvency procedure or the customer does not cease to pay debts as they fall due. Should this arise we have the right to require the customer to provide us with particulars of the assigned claims and of the debtors and to give us all information necessary for collection and supply us with the relevant documents and give the debtor notice of the assignment.

- Work carried out or changes made to delivered goods are for our benefit. The right of the customer to make onward sales of delivered goods attaches to the article in its altered state. If the delivered goods are combined with other goods not our property we will acquire joint property in the new article in proportion to the objective value of the goods that we supplied in the article in which they were so combined at the time that they were so combined. The same rules will apply with regard to such article as for other goods supplied under reservation of title.
- Upon incorporation of goods in which we have retained title as a substantial component in a property, ship, shipyard or airplane the customer assigns to us together with all rights arising and in priority before all others the said claims which accrue to him as against third parties as security for our claims against him to the extent of the value of the goods in which title has been retained. Article 9, subparagraphs 2 and 3 apply accordingly.
- Upon disposal of a property, ship, shipyard or airplane belonging to him in which he has incorporated goods in which we have retained title as a substantial component the customer assigns to us by way of security for our claims against him all claims which he has against a third party in respect thereof to the extent of the value of the goods in which title has been retained with all rights arising and in priority before all others. Article 9, subparagraphs 2 and 3 apply accordingly.
- If delivered goods are mixed or combined with other goods not our property so that they become indistinguishable we acquire joint property in the product thereof in proportion to the objective value of the goods we have supplied to the other goods at the time of such mixing or combination. If the result of the process is that such product is principally the property of the customer it is hereby agreed that the customer recognizes us as proportionate joint owner and is wholly responsible to safeguard our sole or joint property rights.
- We obligate ourselves to release the securities due to us upon the customer's demand insofar as the realizable value of our securities exceeds the claims to be secured by more than 10 % or exceeds the nominal value by more than 50 %; the releasable securities are ours to choose.

Article 10 - Patent rights

- If nothing different is agreed upon, we have to provide the supply freely from commercial patent rights and copyrights of third persons only in the country of the place of delivery.
- So far it gets produced according to plans, models or comparable descriptions or arrangements of the customer, the customer assures that by our supply no patents, utility models, registered designs, brand trademarks or other patent rights of third persons are violated. If third persons enter claim to us because of patent rights in this context, the customer has to exempt us from all those claims.

Article 11 - Applicable law, place of performance, jurisdiction

- The law of the Federal Republic of Germany will apply to this contract.
- The place of performance for all commitments of this contract is D-73230 Kirchheim/Teck.
- For contracts with sales persons, legal persons of public law, special funds under public law and with foreigners who have no in-land jurisdiction the place of competent jurisdiction shall be in D-73230 Kirchheim/Teck. However, we reserve the right to give notice of any claim also at the residence of the customer.
- In matters relating to the interpretation of these conditions the text in the German language in the current version will be the authentic text and will be supplied to any contractual party upon request.

Article 12 - Severability

Should a provision of this contract be or become impossible of being given effect the application of the other provisions of this contract will not be thereby affected. In this case the parties will have the obligation to set aside the unworkable provision in a further agreement which gives effect in the most efficient manner to what the parties would have agreed had they been aware of the ineffective provision.