

GENERAL TERMS AND CONDITIONS OF DELIVERY

STEMMANN-TECHNIK GmbH, Niedersachsenstraße 2, 48465 Schüttorf

Version: 01/2020

I. General information

1. These General Terms and Conditions of Delivery (“**GTD**”) by the STEMMANN-TECHNIK GmbH, Niedersachsenstraße 2, 48465 Schüttorf (the “**Supplier**”) for the supply of goods, commodities, products and services (also referred to jointly or individually as the “**Supplied Article(s)**”) apply between the Supplier and the principal, buyer and/or ordering party of the corresponding Supplied Articles (the “**Customer**”) (the Supplier and the Customer are together also referred to as the “**Parties**” or individually as a “**Party**”).
2. Together with these GTD, the orders and commissions accepted by the Supplier or the individual contracts concluded between the parties (these orders, commissions and individual contracts each also referred to as “**Individual Contract**”; the Individual Contracts and the GTD together the “**Contract**”) govern the legal relationship between the Supplier and the Customer conclusively.
3. General terms and conditions used by the Customer do not apply besides the GTD unless the Supplier expressly consents to the application of such conditions in writing. The GTD apply even if the Supplier performs delivery to the Customer without reservation although he knows of the Customer’s conditions.
4. In case of contradictions between the Individual Contract and these GTD, the provisions of the Individual Contract shall prevail.

II. Conclusion of contract

1. All offers made by the Supplier are subject to change and non-binding unless they are expressly marked as binding or contain a specific acceptance period.

This also applies if the Supplier has provided the Customer with catalogs, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards) other product specifications or documents – in electronic form as well – (jointly referred to as the “**ST Documents**”). The Supplier also retains all ownership and property rights to these ST Documents unless the Parties have expressly agreed otherwise. If requested, the ST Documents are to be returned to the Supplier without delay (especially if no commission is issued by the Customer) unless agreed otherwise by the Parties.
2. Only the order of Supplied Articles by the Customer shall be considered a binding contractual offer. The Supplier can accept orders by the Customer within three weeks of receipt.

III. Prices and conditions of payment, further expenses

1. The prices apply to the scope of services and delivery set forth in the Supplier’s order confirmation. Extra or special services will be invoiced separately. The prices are in EURO ex works; packaging, statutory VAT and, in case of export deliveries, customs as well as fees and other public charges are extra.
2. Invoice amounts are to be paid within thirty days without deduction unless otherwise agreed in writing. The date of payment will be determined by the time of receipt by the Supplier. Payment by cheque is barred unless specifically agreed in the individual case.
3. If the Customer does not make payment upon maturity, the outstanding amount will accrue interest as of the date of maturity at a rate of 5 % per annum; the assertion of further or higher interest rates and further damages in case of default remains unaffected.
4. The Supplier is entitled to deliver, perform or provide outstanding Supplied Articles only against advance payment or a security deposit if, after conclusion of the Contract, he gains knowledge of circumstances which are likely to lower the Customer’s credit standing and which jeopardize the payment of outstanding receivables arising from the respective contract relationship to the Supplier by the Customer.

5. Insofar as the Supplier incurs expenses by performing services elsewhere than the Supplier's location, Niedersachsenstraße 2, 48465 Schüttorf, (e.g. if the Supplier has undertaken to erect or assemble the Supplied Article at the Customer's location), the Customer also bears the costs for all necessary expenses incurred by the Supplier such as travel expenses and costs to transport tools.
6. The Supplier is not obligated to provide services in advance of payment.

IV. Retention of title

1. Until all the Supplier's current and future claims from the Contract and the ongoing business relationship with the Customer (secured claims) have been fully paid, the Supplier retains the ownership of the Supplied Article.
2. The Supplied Articles subject to retention of title may not be pledged nor their title be transferred to third parties as a security before full payment of the secured claims. The Customer shall inform the Supplier in writing without delay if a petition to institute insolvency proceedings is filed or third parties seize (e.g. attachment) the Supplied Articles subject to retention of title.
3. In case of breach of the Contract by the Customer, especially non-payment of the due purchase price, the Supplier is entitled to withdraw from the Contract according to the statutory provisions and/or demand the restitution of the goods based on the retention of title. The restitution demand does not at the same time contain a withdrawal declaration. Rather, the Supplier is entitled to only demand restitution and reserve the right of withdrawal. If the Customer does not pay the due purchase price, the Supplier may only assert these rights if the Supplier has set the Customer a period of grace for payment beforehand that expired without effect or such a grace period is dispensable according to statutory provisions.
4. The Customer is authorized (until revoked according to section IV.4.c. below) to resell the Supplied Articles subject to retention of title in the proper course of business and/or to process them. In this case, the following provisions apply:
 - a) The retention of title extends to the products resulting from the processing, intermingling or combination of the Supplied Articles at their full value in which case the Supplier is considered the manufacturer. If after processing, intermingling or combining with goods belonging to a third party the third party's ownership interests persist, the Supplier shall acquire joint ownership proportional to the invoice value of the processed, intermingled or combined goods. Otherwise, the same applies to the resulting product as for the Supplied Articles subject to retention of title.
 - b) The claims against third parties which arise from the resale of the Supplied Articles or the products are hereby assigned, completely or in the amount of any joint ownership interest of the Supplier according to section IV.4.a. (as the case may be), by the Customer to the Supplier as a security. The Supplier accepts this assignment. The Customer's obligations as specified in section IV.2. also apply in consideration of the assigned claims.
 - c) Besides the Supplier, the Customer remains authorized to collect on the claim. The Supplier undertakes not to collect on claims as long as the Customer meets its payment obligations towards the Supplier, there is no deficiency in the Customer's performance capacity and the Supplier does not assert the retention of title by exercising its right according to section IV.3. However, if this is the case, the Supplier can demand from the Customer to disclose the assigned claims and the respective debtors, provide all information necessary for collection, hand over the related documents and inform the debtors (third parties) of the assignment. In this case, the Supplier is also entitled to revoke the Customer's authorization to resell and process the Supplied Articles subject to retention of title.
 - d) If the realizable value of the securities exceeds 10 % than the Supplier's claims, the Supplier shall upon request by the Customer release securities as chosen by the Supplier.

V. Delivery

1. Deliveries shall be effected ex works (Incoterms 2020).
2. The deadlines and dates for deliveries and performances proposed by the Supplier are only approximate unless a fixed deadline or a fixed date was promised or agreed on specifically. If transport was agreed, the delivery deadlines and delivery dates refer to the time at which the delivery or performance is passed on to the forwarding agent, freight carrier or other third party commissioned with transport.

3. In case of impossibility of delivery or delays in delivery that are caused by *force majeure* or other occurrences not foreseeable at the time the Contract was concluded (e.g. interruption of operations of all kinds; difficulties in procuring materials or power; transport delays; strikes; lawful lockouts; lack of manpower, power or raw materials; difficulties in obtaining necessary permits from public authorities; measures by public authorities or missing, incorrect or unpunctual deliveries by upstream suppliers) which the Supplier is not responsible for, the following provisions apply: In as far as such occurrences make delivery by the Supplier substantially more difficult or impossible and the hindrance is not of a temporary nature, the Supplier is entitled to withdraw from the Contract. In case of temporary hindrances, the deadlines for delivery or performance will be prolonged or the delivery or performance dates will be postponed by the period that the hindrance existed plus a reasonable restarting period. If the Customer cannot be reasonably expected to accept the delivery or performance due to the delay, he can withdraw from the Contract by issuing a written declaration to that effect to the Supplier without delay.
4. The Supplier is entitled to make partial deliveries if
 - the partial delivery can be used by the Customer for the contractual purpose intended,
 - the delivery of the remaining ordered goods is assured and
 - this does not cause the Customer considerable extra effort or additional costs (unless the Supplier declares its willingness to defray such costs).
5. If not expressly agreed otherwise, the erection, installation and/or assembly of the Supplied Articles (at the Customer's location) is not owed by the Supplier.

VI. Place of performance, shipping, packaging, transfer of risk, acceptance

1. Place of performance for all obligations arising from the Contract is Schüttorf, Deutschland, unless otherwise prescribed. If the Supplier also owes erection, installation and/or assembly, the place of performance shall be the location at which the erection, installation and/or assembly is to be carried out.
2. The type of transport and packaging is at the reasonable discretion of the Supplier.
3. The risk shall pass to the Customer at the latest with the handover of the Supplied Article (the beginning of the loading process is decisive) to the forwarding agent, freight carrier or other third party commissioned with transportation. This also applies to partial deliveries or if the Supplier has undertaken further services (e.g. shipping, assembly, erection or installation). If dispatch or the handover is delayed due to circumstances in the sphere of the Customer, the risk shall pass to the Customer on the date on which the Supplied Article is ready for dispatch and the Supplier has notified the Customer of this fact.
4. Storage costs after the transfer of risk shall be borne by the Customer. In case of storage by the Supplier, the storage costs will be 0.25% of the invoice amount for the stored Supplied Article for each full week. The assertion and proof of higher or lower storage costs is reserved.
5. The shipment of the Supplied Article will only be insured by the Supplier against theft, breakage, shipping, fire and water damages or other insurable risks at the express wish and expense of the Customer.
6. Insofar as the Parties agree that an acceptance shall take place with regard to the Supplied Article, the Supplier will inform the Customer about completion within a reasonable period of time after completion of the performance in question. The Customer will then declare acceptance within a reasonable period (usually not longer than 14 days) to the extent the performance was provided by the Supplier in accordance with the Contract. Acceptance cannot be refused based on insignificant defects. If the Customer does not accept the work within a reasonable period set by the Supplier although he is obligated to do so, this will have the same effect as acceptance.

VII. Erection, installation, assembly

In case of erection, installation and/or assembly of the Supplied Article by the Supplier, the following provisions shall apply if nothing else has been agreed in writing:

1. The Customer shall provide at its expense and make available in time:
 - a) all earthworks, construction works and other ancillary works outside the sector relevant to this Contract

including the necessary skilled and unskilled labor, building materials and tools,

- b) the required equipment and materials for assembly and activation, such as scaffolding, lifting equipment and other devices, fuels and lubricants,
 - c) power and water at the point of use, including the connections, heating and lighting,
 - d) sufficiently large, suitable, dry and lockable rooms at the place of assembly to store the machine parts, apparatuses, materials, tools and so forth and adequate rooms for the assembly personnel to work and take breaks in, including adequate sanitary facilities under the circumstances; furthermore, the Customer must take the measures to protect the possessions of the Supplier and the assembly personnel on the construction site that he would take to protect its own possessions,
 - e) protective clothing and safety guards that are necessary due to the particular circumstances of the assembly site.
2. Before the assembly work begins, the Customer must provide the necessary information on the location of concealed power, gas and water lines/pipes or similar facilities as well as the necessary statics information unasked.
 3. Before the erection or assembly begins, the provided materials and objects necessary to commence work must be present at the erection or assembly site and all preliminary work have progressed to an extent that the erection or assembly can be begun as agreed and carried out without interruption. Access roads and the erection or assembly location must be level and cleared.
 4. If the erection, installation or the assembly is delayed for reasons that the Customer is responsible for, the Customer shall bear the additional travel costs and cost of lodging incurred by the Supplier as a result to a reasonable extent.
 5. The Customer shall attest to the Supplier the hours worked by Supplier's personnel in carrying out the erection, installation and assembly as well as the completion of the tasks in question on a weekly basis.

VIII. Customer rights in case of material defects, complaints

1. The warranty period is one year after delivery of the Supplied Article or, if acceptance is necessary, after acceptance. This period does not apply to claims for damages by the Customer for injury to life, body or health or to intentional or grossly negligent breach of duty by the Supplier or its agents which are each time-limited according to the statutory provisions.
2. Within the warranty period, material defects to the Supplied Article shall either be repaired free of charge, replaced by a new delivery or performed anew (Supplier's choice) if the cause of the defect was already present at the time of the transfer of risk. Parts that have been replaced are/become the Supplier's property.
3. Deviating from § 434 German Civil Code (BGB), the Parties agree that, unless a different individual agreement has been reached, the nominal quality of the Supplied Article at the time of risk transfer has been fulfilled if – with regard to the production of the Supplied Article by the Supplier – it is of average kind and quality. Lesser quality shall not be considered a defect if the contractual use is not impaired. Section 434 (2) sentence 2 BGB does not apply.
4. The delivered Supplied Articles are to be examined carefully without delay after delivery to the Customer or to the third party designated by the Customer. With regard to obvious defects or other defects that would have been apparent during an immediate careful examination, they shall be considered authorized by the Customer if the Supplier does not receive a written complaint within 10 days after delivery. With regard to other defects, the Supplied Articles shall be considered authorized by the Customer if the complaint does not reach the Supplier within 10 days after the date on which the defect showed itself. However, if the defect could have been recognized earlier by the Customer in the course of normal use, this earlier date shall determine the beginning of the complaint period. At the Supplier's request, the Supplied Article subject to complaint is to be transported back to the Supplier freight paid. If the complaint is justified, the Supplier will reimburse the costs for the most inexpensive method of transport. This does not apply insofar as the costs are higher because the Supplied Article is at a location other than the location for the intended use.
5. In case of complaint, payments by the Customer may be withheld to the extent proportionate to the defects that have occurred. The Customer can only withhold payments if a complaint is asserted that is unquestionably

justified. If the complaint is unjustified, the Supplier is entitled to claim reimbursement from the Customer for the expenses he incurred.

6. The Customer has no claims for defects in case of only an insignificant deviation from the agreed quality and in case of natural wear and tear.

There are also no defect claims for defects that ensue due to incorrect or careless treatment, excessive use, unsuitable equipment, defective construction work, unsuitable building ground or due to special external influences that are not assumed in the Contract and, also, in case of not repeatable software errors. Furthermore, no defect claims can be asserted for improper alterations or repairs made by the Customer or a third party and the consequences thereof.

7. The Customer's claims for the necessary expenses required for supplementary performance, especially transport costs, travel costs, work costs and cost of materials, are precluded insofar as the expenses are higher because the Supplied Article is later brought to a place other than the Customer's location unless the transfer conforms with its intended use.
8. In case of defects in other manufacturer's components that the Supplier cannot rectify for legal licensing reasons or factual reasons, the Supplier will either assert its warranty claims against the manufacturer and upstream supplier for account of the Customer or assign them to the Customer (Supplier's choice). In case of such defects, warranty claims against the Supplier only exist under the further conditions and as set forth in these GTD if enforcement of the aforementioned claims against the manufacturer and upstream supplier was unsuccessful in court or is futile, for example, due to insolvency. For the duration of such a legal dispute, the limitation period for the affected warranty claims of the Customer against the Supplier is suspended.
9. If the delivery of used articles is agreed with the Customer in the individual case, any and all warranties for material defects are excluded.
10. For damage compensation claims, section XI. applies in all other respects.

IX. Industrial Property Rights

1. During the warranty period described in section VIII.1., the Supplier guarantees that the Supplied Article is free of industrial property rights or copyrights of third parties at the time of transfer of risk as set forth in this section IX. Each Party will inform the respective other Party in writing without delay if claims for infringement of such rights are asserted against it.
2. In case the Supplied Article infringes on an industrial property right or copyright of a third party, the Supplier will either alter the Supplied Article in such a way or exchange it at its expense so that third party rights are no longer being infringed but the Supplied Article still fulfills the contractually agreed functions or obtain the right of use by concluding a licensing contract (Supplier's choice). If the Supplier fails in doing so within a reasonable amount of time, the Customer is entitled to withdraw from the Contract or reduce the purchase price accordingly. Any claims for damages by the Customer are subject to the restrictions described in section XI. of these GTD.
3. In case of legal infringements by products made by other manufacturers and delivered by the Supplier, the Supplier will either assert its claims against the manufacturer and upstream supplier for account of the Customer or assign them to the Customer (Supplier's choice). According to section IX, claims against the Supplier exist in this case only if the enforcement of the aforementioned claims against the manufacturer and upstream Supplier in court was unsuccessful or is futile, for example, due to insolvency.
4. The abovenamed Supplier's obligations apply only insofar as the Customer informs the Supplier in writing about the claims asserted against the Customer by a third party without delay, does not admit an infringement and all defenses and settlement negotiations are reserved for the Supplier.
5. Claims by the Customer are also precluded insofar as the infringement of industrial property rights is due to special instructions by the Customer, a type of use not foreseeable for the Supplier or the fact that the Customer altered the delivery or used it together with products not delivered by the Supplier.

X. Software

1. With regard to any software necessary for the use of the Supplied Article which was included in delivery by the

Supplier, the Customer will be granted a basic, non-exclusive, not sublicensable right to use the software for the purpose of using the Supplied Article.

2. Furthermore, the Customer is not entitled to decompile the software, unless this is allowed by mandatory law that cannot be derogated from by contract.
3. All other rights to the software and the documentation, including copies, remain with the Supplier or the software supplier (as the case may be).

XI. Liability of the Supplier

1. In the following cases, the Supplier is liable to the Customer for reimbursement of expenses and compensation of damages (hereinafter in section XI.: “**Compensation**”) as prescribed in the statutory provisions: In case of liability according to the German Product Liability Act (ProdHaftG); in case of intent or deceit; in case of gross negligence; in case of injury to life, body or health; in case of a guarantee assumed by the Supplier and in all other cases of mandatory statutory liability.
2. The Supplier is also liable to the Customer for Compensation in cases of culpable breach of so-called cardinal duties according to the statutory provisions. Cardinal duties in this sense are all duties which when breached would jeopardize achieving the purpose of the contract and all duties whose performance makes the correct implementation of the contract possible in the first place and in the observance of which one can regularly trust. If, however, the breach of a cardinal duty occurred only due to slight negligence and did not lead to injury of life, body or health, the Customer’s claims for Compensation are limited to the amount of typical, foreseeable damages.
3. Otherwise, the Customer’s claims for Compensation against the Supplier are precluded, whatever the legal basis.
4. Insofar as the Supplier’s liability is limited or precluded according to the above provisions, this also applies to the personal liability of its legal representatives, employees and the Supplier’s agents.
5. Any statutory liability privileges remain unaffected.
6. The aforementioned provisions in section XI. do not lead to a change in the burden of proof to the Customer’s disadvantage.
7. In the cases named in section XI.2. sentence 3, the limitation period shall be one year as of the end of the year in which the respective claim arose, and the Customer gained knowledge – or should have gained knowledge but for gross negligence – of the circumstances the claim is based on and the identity of the debtor.

XII. Confidentiality

1. The Parties agree that the Customer must maintain secrecy regarding Confidential Information and may not disclose such Confidential Information to third parties. “Confidential Information” means all information and documents belonging to the Supplier that have been marked as confidential or must be considered confidential under the circumstances, especially information on the Supplier’s business operations, business relations and know-how. The existence of the Contract and the content of the Contract (especially the prices regarding the Supplied Articles) shall also be considered confidential information.
2. Exempt from the obligations in section XII.1 is such Confidential Information that
 - a) was demonstrably already known to the Customer at the time of the conclusion of the Contract or that was passed on to the Supplier afterwards from a third source without a duty to secrecy, statutory provisions or order by public authority being violated thereby;
 - b) was public knowledge at the time of conclusion of the Contract or later became public knowledge if this is not based on a breach of this Contract; and/or
 - c) must be disclosed due to a statutory obligation or an order by a court or a public authority. Insofar as is permissible and possible, the Customer will inform the Supplier beforehand and give the opportunity to take measures to prevent the disclosure.

3. The Customer shall only provide Confidential Information to those employees who need to know this information in order to perform this Contract. The Customer will impose a duty to maintain secrecy on these employees which essentially corresponds to the requirements of this section XII. and remains valid after they leave to the extent that is permissible according to labor law.
4. The aforementioned provisions of this section XII. shall continue to apply even after termination of the (respective) Contract with the Customer for a period of further five years.

XIII. Miscellaneous

1. Amendments or additions to this Contract (including this clause) require a written agreement by the Parties.
2. The Customer is only permitted to set off its counterclaims if the counterclaims have been established as legally binding by a court, are not disputed or are recognized by the Supplier. The Customer is also (only) entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship, its counterclaims are not disputed, recognized or established as legally binding.
3. The Supplier is entitled to use third parties to perform its obligations arising from this Contract. This includes companies affiliated with the Supplier according to §§ 15 ff. German Stock Corporations Act (AktG).
4. Solely the law of the Federal Republic of Germany applies under exclusion of (i) the United Nations Convention on Contracts for the International Sale of Goods and (ii) the legal norms that invoke another legal order.
5. Exclusive place of court jurisdiction for all disputes arising from or in connection with the Contract is Schüttorf, Germany.
6. Should individual provisions in the Contract be or become invalid, the validity of the Contract will remain otherwise unaffected. The invalid provision shall then be replaced by a provision that comes as close as possible to the economic purpose intended by the Parties. The same applies in case the Contract contains contractual gaps.
