



General Terms and Conditions of Delivery and Payment

Firm Hilger u. Kern GmbH

Version: 01/2009

I. General Provisions

1. Hilger u. Kern GmbH's General Terms and Conditions of Payment shall be referred to hereinafter as "Conditions of Delivery", the company Hilger u. Kern as the "Supplier" and Hilger u. Kern GmbH's customer as the "Purchaser".
2. Only the following Conditions of Delivery shall apply to deliveries carried out by the Supplier. The Supplier does not acknowledge conflicting conditions of delivery or conditions of delivery of the Purchaser which diverge from these General Conditions of Delivery unless the Supplier has expressly consented to their applicability in writing. The Conditions of Delivery shall also apply if the Supplier carries out the delivery to the Purchaser without reservation with the knowledge of conflicting conditions of delivery or conditions of delivery of the Purchaser which diverge from the Conditions of Delivery.
3. The Conditions of Delivery shall apply solely to deliveries to entrepreneurs within the meaning of §§ 14, 310 Para. 1 of the Civil Code (BGB), to legal persons under public law as well as to special assets under public law.
4. All agreements which are made between the Supplier and the Purchaser for the purpose of executing this contract are laid down in writing in this contract.
5. The Supplier's Conditions of Delivery shall apply also to the delivery of used delivery items. They shall apply also to future transactions with the Purchaser.

II. Tender, tendering documents

1. The Supplier may accept tenders presented by the Purchaser within 2 weeks.
2. The Supplier's tenders shall be non-binding. Only the written confirmation of an order by the Supplier shall constitute a contract.
3. The Supplier shall reserve unlimited property rights and copyrighted rights of exploitation in respect of figures, drawings, calculations, cost estimates and other documents belonging to the Supplier (hereinafter: documents). This shall apply also to such written documents which are designated as "confidential". Documents may be made accessible to third parties only after prior express written approval given by the Supplier and shall be returned to the Supplier without delay if the order is not given to the Supplier.
4. Para. 3 shall apply correspondingly to the Purchaser's documents. These documents may, however, be made accessible to third parties to whom the Supplier has transferred deliveries to the Purchaser in a permissible way.
5. Information provided by the Supplier, such as weights and measures, and documents transferred by the Supplier, such as figures and drawings, are binding only insofar as the Supplier lists them expressly as elements of the contract or expressly refers to them.

III. Modalities of Delivery

1. The scope of the deliveries shall be determined solely by the written declarations of both parties, in particular by the written confirmation of order on the part of the Supplier in addition to their written annexes.
2. Part deliveries shall be permissible insofar as they are reasonable for the Purchaser.
3. The Purchaser may not refuse acceptance of deliveries because of insignificant faults and deviations in terms of quantity.
4. If the Purchaser wishes the Supplier to assemble and start-up the delivery item in his works, this shall be separately agreed in the contract of purchase in respect of the delivery item.
5. If it is agreed that a delivery item is to be delivered to a destination other than the place of fulfilment, the delivery will be insured against the usual transport risks by the Supplier at the request of and at the expense of the Purchaser.

6. The fulfilment of the contract in respect of a delivery item or that part of a delivery item which is covered by statutory export regulations shall be subject to the reservation that the necessary approvals are issued to the Supplier.

IV. Transfer of risk

1. Insofar as the confirmation of order does not state otherwise, delivery shall be agreed "ex works". Clause 1 shall also apply, insofar as it is not agreed otherwise, in the event that assembly/start-up of the delivery item at the Purchaser's works was agreed by the Supplier.
2. As of notification of readiness to dispatch, the delivery item is to be collected by the Purchaser within 2 weeks. If this is not done, the delivery item shall be deemed to have been transferred.
3. If, by way of divergence from Para. 1, a sales shipment was agreed, the risk shall be transferred, even in the case of carriage-paid delivery, to the Purchaser if the delivery item has been delivered to the person or body intended for carrying out the dispatch. Clause 1 shall apply, insofar as it is not agreed otherwise, even in the event of assembly/start-up of the delivery item having been agreed in the Purchaser's works by the Supplier and the person intended for carrying out the dispatch not being one of the Supplier's employees.
4. If assembly and/or start-up of the delivery item was agreed by the Supplier in the Purchaser's works as well as, by way of divergence from Para. 1, a sales shipment was agreed whereby the person intended for carrying out the dispatch is one of the Supplier's employees, the risk shall be transferred with the take-over of the delivery item by the Purchaser in the Purchaser's own works after assembly/start-up has been carried out or, insofar as it was agreed, shall be transferred to the Purchaser after a fault-free trial operation.
5. If delivery, dispatch, delivery, assembly, start-up, take-over or trial operation is delayed or does not take a place for reasons for which the Purchaser is responsible or if the Purchaser is in delay of performance of acceptance for other reasons, the risk shall be transferred to the Purchaser from the date of notification of readiness to deliver.
6. The regulations in respect of the transfer of risk shall apply also if there are part deliveries.

V. Periods of deliveries

1. Agreed periods shall not begin until agreement has been reached on all details of execution of the Purchaser's order, all technical and commercial issues have been clarified, the Purchaser has furnished the information, documents and materials which are to be provided by him and – insofar as advance payment or part payment has been agreed – has paid the agreed price or made the part payment. If these conditions are not met in good time, the periods shall be appropriately extended. This shall not apply if the Supplier is responsible for the delay.
2. Compliance with the obligation to deliver by the Supplier shall presuppose the correct fulfilment in good time of the Purchaser's obligations. The right shall be reserved to make the plea of non-performance of contract.
3. The delivery period has been complied with if there has been notification of readiness to dispatch within the agreed period or – in the event of agreement of an obligation of the dispatch which is owed or in the event of agreement of assembly and/or start-up of the delivery item at the Purchaser's works by the Supplier – the delivery item has left the Supplier's works by the end of the agreed period.
4. Compliance of the delivery period shall be with reservation of the Supplier being correctly supplied in good time. The Supplier shall inform the Purchaser without delay in respect of delays which are becoming evident and, in the event of withdrawal, shall pay the Purchaser the corresponding counter-performance without delay.

5. If non-compliance of the periods is to be attributed to force majeure, e. g. mobilization, war, unrest or to similar events which are not within the influence of the Supplier, e. g. strikes, lock-out, the periods shall be extended correspondingly. This shall apply also in the event that the Supplier should be in delay of performance with the delivery. The Supplier shall provide information on delays which are becoming evident.

VI. Prices and conditions of payment

1. Insofar as the confirmation of order does not provide for otherwise, the prices shall apply ex works, including loading in the works, however, excluding packaging and unloading. Packaging and unloading shall be invoiced separately.
2. Sales Tax shall be added at the statutory rate to the prices. Sales Tax shall be identified separately in the invoice on the date of invoicing.
3. Insofar as the confirmation of order does not provide for otherwise, the purchase price shall be due for payment net (without deduction) within 14 days as of the date of invoice.
4. The deduction of discounts shall require special written agreement.
5. If, after notification of readiness to dispatch, collection, dispatch or delivery of the delivery item is delayed for more than one week at the request of the Purchaser, a storage charge to the sum of 0.5 % of the price of the delivery item may be charged to the Purchaser for every begun week, a maximum, however, of 5% in all. The parties to the contract shall be at liberty to demonstrate higher or lower storage charges.
6. The costs of assembly and start-up of the delivery item shall not be included in the tender price. Assemblies and start-ups shall be charged in accordance with the outlay involved at the Supplier's current hourly rates. The Supplier's current hourly rates may be requested from the Supplier. Sales Tax shall be added at the statutory rate to the hourly rates. Sales Tax shall be identified separately in the invoice at the date of invoicing. Journey times shall be deemed to be working hours. Waiting times for which the Purchaser is responsible shall also be deemed working hours.
7. If the Supplier has taken over from the Purchaser assembly and/or start-up of the delivery item at the Purchaser's works and it has not been agreed otherwise, the Purchaser shall bear all subsidiary costs which are necessary as a result of assembly and/or start-up, such as travel costs, transportation costs for transporting tools and personal luggage, in addition to the agreed remuneration for assembly and/or start-up in accordance with Para. 6 of this Item.
8. Insofar as the confirmation of order does not provide for otherwise, the remuneration for the agreed assembly/start-up shall be due for payment net (without deduction) within 14 days as of the date of invoice.
9. The Purchaser may present only such counter-claims which are uncontested in terms of the reasons for them and their extent or which have legal force. In addition, the Purchaser shall be authorized to exercise a right of retention to the extent that his counter-claim is based on the same contractual relationship.
10. In the case of deliveries to countries within the European Union, the Purchaser, in order to demonstrate his exemption from Sales Tax, has to provide notification of his Sales Tax identification number in good time before the contractually agreed date of delivery. In the event of the Purchaser failing to provide a complete notification in good time, the Supplier shall reserve the right to charge the currently valid Sales Tax. In the case of work performed outside the European Union, the Supplier shall be entitled to make a later charge of the statutory Sales Tax if the Purchaser does not send an export certificate to the Supplier within one month of the respective dispatch.

VII. Additional agreements in respect of assembly and start-up

1. If the Supplier has taken over from the Purchaser assembly and/or start-up of the delivery item at the Purchaser's works, the Purchaser has to inform the Supplier and his servants and assistants of existing safety regulations and risks at his own cost and to take all necessary measures for protecting persons and property at the workplace.
2. The Purchaser has to provide the necessary extent of support to the Supplier and his servants and assistants at his own cost when they are carrying out the work for assembly and/or start-up and to provide necessary assistance such as preparing the construction site, providing tools and hoists, providing water and electricity, etc. This assistance must guarantee that assembly/start-up work may be begun immediately after the Supplier and his servants and assistants arrive at the Purchaser's works and that assembly/start-up work may be carried out without delay until acceptance of the assembly and/or start-up work.

3. If the Purchaser does not meet his obligations arising from this Item VII., the Supplier shall be entitled, but not obliged, to carry out the actions which are incumbent on the Purchaser in his place and at his expense.
4. Parts which are replaced by way of exchange shall become the Supplier's property.

VIII. Impossibility of performance, delay in performance

1. If neither party to the contract is responsible for the impossibility of performance, the Supplier shall have a claim to a portion of the remuneration which corresponds to the work which he has performed.
2. The Purchaser shall be in delay in performance of payment if he exceeds agreed periods for payment. If no period for payment has been agreed, the Purchaser shall be in delay in performance 14 days after the date of settlement without further declarations on the part of the Supplier insofar as the Purchaser has not made payment. In the event of the delay in performance of payment on the part of the Purchaser, the Supplier shall be entitled to charge the statutory interest for delay in performance in accordance with § 288 Para. 2 of the Civil Code (BGB) to the sum of 8 % points above the base rate of interest.
3. If the Purchaser is in delay of acceptance or if the Purchaser culpably violates other obligations of cooperation, the Supplier shall be entitled to demand compensation for losses which have accrued to him to that extent, including any additional outlays. The right shall be reserved to make further claims. The Supplier shall, after setting an appropriate period for collection or delivery which expires to no avail, reserve the right to dispose otherwise of the delivery item and to supply the Purchaser within an appropriately extended period.

IX. Withdrawal

1. The statutory provisions shall apply for withdrawal from the contract. The Purchaser may, however, withdraw from the contract in this connection only if the Supplier is responsible for the violation of an obligation. In the event of faults, however, the statutory conditions shall apply.
2. The Supplier is entitled to withdraw from the contract if the Purchaser ceases payment, if there is an application to open insolvency proceedings, if enforcement proceedings against him have been initiated or there is protest against a bill of exchange or a cheque or if, after the contract has been concluded, circumstances become known which result in Purchaser's lack of the credit worthiness. In the case of part deliveries, Clause 1 shall apply correspondingly to a withdrawal for that part of the contract which has still not been fulfilled.
3. In the event of violations of obligations, the Purchaser has to explain within an appropriate period of being asked to do so by the Supplier whether he is withdrawing from the contract because the violation of an obligation or whether he insists on delivery.

X. Reservation of ownership

1. The delivery item shall remain the Supplier's property until all claims in his favour against the Purchaser arising from the business connection are fulfilled. Insofar as the validity of the reservation of ownership is tied in the country of destination to particular requirements or particular requisites of form, the Purchaser has to ensure their fulfilment.
2. The Purchaser shall be obliged to treat the purchased goods with care. In particular, he is obliged, at his own expense, to insure them sufficiently at their value when new against fire, water and theft losses. Insofar as maintenance and inspection work is necessary, the Purchaser must carry this out at his own expense in good time.
3. The Purchaser shall be permitted to process the delivery item or to combine it with or to connect it to other objects. The delivery item shall be processed, combined or connected (hereinafter together: process) for the Supplier. The Purchaser shall keep the object which has arisen as a result of processing (hereinafter: new goods) for the Supplier with the care of a conscientious businessman.
4. In the case of processing with other objects which do not belong to the Supplier, the Supplier shall have co-ownership of the new goods to the sum of the proportion which arises from the ratio of the value of the processed delivery item to the value of the other processed goods at the time of processing. Insofar as the Purchaser acquires sole property of the new goods, the Supplier and Purchaser shall agree that the Purchaser concedes to the Supplier co-ownership of the new goods in the ratio of the value of the processed delivery item to the other processed goods at the time of processing.

5. The Purchaser shall be entitled to sell on the delivery item or the new goods by way of ordinary business. In this case, the Purchaser shall, for the sake of safety, hereby cede to the Supplier his claim arising from the resale in respect of the buyer together with all subsidiary rights, without further particular declarations being required, independently of whether the delivery item has been sold on with or without processing. The cession shall apply solely to any balance claims. The cession shall however, apply only to the sum of the amount which corresponds to the price of the delivery item (including Value Added Tax) which has been invoiced by the Supplier. The portion of the claim which has been ceded to the Supplier shall have priority.
 6. If the Purchaser combines the delivery item or the new goods with real estate or personal property, he shall, for the sake of safety, cede to the Supplier without further particular declarations being required, his claim also, to which he is entitled as remuneration for making the combination, together with all subsidiary rights to the sum of the proportion of the value of the delivery item or of the new goods to the other combined goods at the time of processing.
 7. The Purchaser shall remain authorized to recover the claims ceded in this Item X, until the authorization is revoked. The Purchaser shall pass on to the Supplier without delay the payments made in respect of the ceded claims to the sum of the secured claim. If there is good reason for it, in particular in the event of delay in performance of payment, cessation of payment, the opening of insolvency proceedings, protest against a bill of exchange or well-founded pointers to over-indebtedness or imminent inability to make payment on the part of the Purchaser, the Supplier shall be entitled to revoke the Purchaser's authorization to effect recovery. If this is the case, the Purchaser has to inform debtors (third parties) of the cession in addition to his duties arising from Para. 8.
 8. In the event of the substantiation of an entitled interest (e.g. in the event of Para. 7), the Purchaser has to issue the Supplier with the necessary information for enforcing his rights in respect of the customer and to surrender the necessary documents.
 9. Insofar as the realizable value of all security rights to which the Supplier is entitled exceed the sum of all secured claims by more than 10%, the Supplier will release a corresponding portion of the security rights at the Purchaser's request. It shall be supposed that the requirements of the above Clause are fulfilled if the estimated value of goods transferred as security and ceded claims reach or exceed 150% of the value of the secured claims. On release, the Supplier shall then be entitled to choose between various security rights.
 10. While the reservation of ownership applies, the Purchaser shall be forbidden from pledging it or using it to make collateral assignment. Resale shall be permitted only to resellers by the normal way of business and only under the condition that the equivalent of the delivery item shall be paid to the Purchaser. The Purchaser has also to agree with the buyer that the buyer acquires property only with this payment. In the event of seizures, confiscations or other dispositions or interventions on the part of third parties, the Purchaser has to inform the Supplier without delay so that he can institute legal proceedings in accordance with § 771 of the Code of Civil Procedure (ZPO). Insofar as the third party is not able to pay to the Supplier the court expenses and the out-of-court expenses of legal proceedings in accordance with § 771 of the Code of Civil Procedure (ZPO), the Purchaser shall be liable for the shortfall suffered by the Supplier.
 11. In the event of the violation of obligations on the part of the Purchaser, in particular in the event of delay in performance of payment, the Supplier shall, without a period being set for this purpose, be entitled to demand the surrender of the delivery item or of the new goods and/or to withdraw from the contract. The Purchaser shall be obliged to effect the surrender. The demand for surrender of the delivery item/of the new goods shall not constitute a declaration of withdrawal on the part of the Supplier unless this is expressly declared. After the purchased goods have been regained, the Supplier shall be authorized to sell them, whereby the proceeds from the sale shall be credited to the Purchaser's liabilities, minus appropriate sales costs.
3. If the provision of subsequent fulfilment does not correct the fault, the Purchaser may - without prejudice to any claims for compensation in accordance with Item XII. - withdraw from the contract or reduce the remuneration. There shall be non-correction of the fault by means of subsequent fulfilment only after the second attempt has been unsuccessful. The statutory cases of the dispensability of setting a period shall otherwise remain unaffected.
 4. Insofar as the Purchaser bases the liability for defects on public statements made by the Supplier, it shall be incumbent on the Purchaser to demonstrate that the Purchaser's decision to buy the item of delivery was affected by these statements.
 5. In the event of complaints in respect of faults, the Purchaser, by way of divergence from Item VI. Para. 8 Clause 2, shall be entitled to a right of retention only if the delivery is obviously faulty. In such a case, the Purchaser shall be entitled to effect retention only insofar as the retained amount is in an appropriate relationship with the faults and the probable costs of subsequent fulfilment (in particular of removing the fault). The Purchaser shall not be entitled to enforce claims and rights because of faults if he has not made due payments and the due amount (including any payments which have been made) is in an appropriate relationship with the value of the -faulty - delivery. If the complaint in respect of faults is wrong, the Supplier shall be entitled to demand compensation from the Purchaser for the expenses which have accrued to him.
 6. There shall be no claims arising from a fault in the case of only insignificant divergence from the agreed state of the item of delivery or in the case of only insignificant impairment to its use. Claims arising from a fault shall, in addition, not arise as a consequence of causes which are not attributable to a fault on the part of the Supplier, e. g. in the case of normal wear and tear of material in the event of proper use, natural wear, damage which results after the transfer of risk as a consequence of faulty or negligent treatment, faulty, inappropriate or improper use, excessive loading, use of unsuitable fuels and oils/substitute materials, faulty operation, assembly or start-up by the Purchaser, incorrect maintenance carried out by Purchaser, faulty construction work, an unsuitable site, incomplete or faulty information provided by the Purchaser or damage which comes into being as a result of particular external influences such as voltage fluctuations in the mains supply, harmful ambient conditions which are unknown to the Supplier, chemical, electrochemical or electrical influences which are not presupposed in accordance with the contract as well as modifications made to the delivery item without the consent of the Supplier and non-reproducible software errors. If incorrect modifications, overhaul work or other interventions are carried out by the Purchaser or by third parties, there shall also be no claims arising from a fault for these and the resulting consequences.
 7. If the delivery item, after it has been transferred to the Purchaser, is transported by the latter to a location other than the location of proper use, the obligation for taking over the necessary expenses for the purpose of subsequent fulfilment on the part of the Supplier shall be limited to the amount which would have been necessary for subsequent fulfilment at the location of proper use.
 8. Item XII. shall otherwise apply to claims for compensation. Further claims or claims other than the claims on the part of the Purchaser which are governed in this Item XI. as well as in Item XII. in respect of the Supplier because of a fault shall be excluded.
 9. The Purchaser's claims arising from a fault shall presuppose that the Purchaser has properly met his requirements to make investigations and to give notice of faults which he must perform in accordance with § 377 of the Commercial Code (HGB). Clause 1 shall apply correspondingly to Purchasers who are not traders within the meaning of § 377 of the Commercial Code (HGB).
 10. In the event of faulty assembly or start-up, Paras 1 - 9 shall apply correspondingly. In the event of faulty assembly or start-up, the Purchaser shall not have the right of carrying out work himself. In the event of withdrawal, the Purchaser shall be entitled to withdraw from the entire contract (contract of purchase in respect of delivery item with agreed assembly/start-up) only if the delivery item is of no interest to the Purchaser without the agreed assembly/start-up carried out by the Supplier.

XI. Faults

The Supplier shall be liable for faults as follows:

1. All those deliveries or those parts of deliveries which have a fault within the statutory limitation period, insofar as the cause of the fault was already present at the time of the transfer of risk, shall be repaired or redelivered free of charge as the Supplier chooses.
2. Firstly, the Supplier shall always be granted an opportunity to provide subsequent fulfilment within an appropriate period. The Supplier has the right to choose whether subsequent fulfilment by removing the fault or redelivery is granted. If the Supplier is not granted the opportunity for providing subsequent fulfilment within an appropriate period, he shall not be liable for the resulting consequences.

XII. Compensation

1. The Supplier shall be liable in accordance with the statutory provisions insofar as the Purchaser enforces claims for compensation which are based on deliberate action or gross negligence, including deliberate action or gross negligence on the part of representatives of or assistants to the Supplier. Insofar as no deliberate violation of the contract is charged to the Supplier, liability for compensation shall be limited to foreseeable, typically occurring losses.

2. The Supplier shall be liable in accordance with the statutory provisions insofar as he culpably violates a significant contractual obligation. In this case, liability for compensation shall, however, be limited to foreseeable, typically occurring losses.
3. Liability for culpable violation of life, physical integrity or health shall remain unaffected. This shall apply also to the mandatory liability in accordance with the Law on Product Liability (Produkthaftungsgesetz).
4. Outside the cases involved in Paras 1-3, liability on the part of the Supplier shall be limited to compensation and to restitution of futile expense because of the impossibility of assembly/start-up of the delivery item to a total of 10 % of the value of assembly/start-up. Outside the cases involved in Paras 1-3, liability on the part of the Supplier shall be limited to compensation and to restitution of futile expense because of the impossibility of delivery to a total of 15 % of the value of that part of the delivery which cannot be purposefully started up because of the impossibility. Clause 2 shall apply also if the Purchaser has no longer any interest in the delivery item as a whole because of the impossibility of assembly/start-up.
5. Outside the cases involved in Paras 1-3, liability on the part of the Supplier shall be limited to compensation and to restitution of futile expense because of delay in performance on the part of the Supplier in respect of the delivery, for compensation in addition to the work to a total of 10% and for compensation instead of the work to a total of 15% of the value of the delivery. Outside the cases involved in Paras 1-3, liability on the part of the Supplier shall be limited to compensation and to restitution of futile expense because of delay in performance on the part of the Supplier in respect of the agreed assembly/start-up of the delivery item, for compensation in addition to the work to a total of 10% and for compensation instead of the work to a total of 15% of the value of the assembly/start-up. If the Purchaser has no longer any interest in the delivery item as well as in assembly/start-up as a whole because of the delay in performance in respect of the assembly/start-up, Clause 1 shall correspondingly apply to the claim for compensation instead of the work.
6. Further liability on the part of the Supplier for compensation shall be excluded, without taking account of the legal nature of the enforced claim. This shall apply in particular to claims for compensation arising from faults in concluding the contract, because of other violation of obligations or because of tortious claims for compensation for material damage in accordance with § 823 of the Civil Code (BGB).
7. The limitations of liability which are governed in this Item **XII**, shall apply also insofar as the Purchaser demands compensation for futile expense instead of a claim for compensation for loss instead of work.
8. Insofar as the liability for compensation is excluded or limited in respect of the Supplier, this shall apply also in respect of the personal liability for compensation on the part of the Supplier's employees, workers, other workers, representatives or assistants.
9. There shall be no change in the burden of proof to the disadvantage of the Purchaser involved in the above provisions.

XIII. Commercial property rights: legal infirmity

1. Insofar as it has not been agreed otherwise, the Supplier shall be obliged to make delivery solely in the country of the place of fulfillment free of commercial property rights and copyrights belonging to third parties (hereinafter: property rights). Insofar as a third party raises authorized claims against the Supplier as a result of deliveries provided by the Supplier and used in accordance with the contract because of the violation of property rights, the Supplier shall be liable to the Purchaser within the period provided for in Item **XIV**. Para. 1 as follows:
 - a. The Supplier will, as he chooses and at his own expense, obtain for the affected deliveries either a right of use, modify them in such a way that the property right is not violated or replace them. If this is not possible for the Supplier at appropriate conditions, the Purchaser shall be entitled to statutory rights of withdrawal or reduction.
 - b. The obligation on the part of the Supplier to pay compensation shall be oriented in accordance with Item **XII**.
 - c. The above-stated obligations on the part of the Supplier are present only insofar as the Purchaser informs the Supplier in writing without delay of claims which are being enforced by the third party, does not acknowledge a violation and the right is reserved for the Supplier to take all defensive measures and conduct negotiations for compositions. If the Purchaser ceases the use of the delivery for reasons of reducing losses or for other good reasons, he shall be obliged to point out to the third party that the cessation of use does not involve any acknowledgement of a violation of a property right.

2. Claims on the part of the Purchasers shall be excluded insofar as he is responsible for the violation of the property right. In addition, claims on the part of the Purchaser are excluded insofar as the violation of the property right is caused as a result of special specifications made by the Purchaser, as a result of an application which has not been notified to the Supplier by the Purchaser or is caused by the delivery being changed by the Purchaser or being used together with products which have not been delivered by the Supplier.
3. In the case of violations of property rights, the provisions of Item **XI**. Para. 2, 5 and 8 shall furthermore correspondingly apply to the claims of the Purchaser which are governed in Para. 1a). If there is other legal infirmity, the provisions of Item **XI**. shall correspondingly apply.
4. Further claims or claims other than those of the Purchaser which are governed in this Item **XIII**. against the Supplier or his agents because of legal infirmity shall be excluded.

XIV. Statutory limitation

1. The statutory limitation period for claims and rights arising from a fault of the delivery item or assembly/start-up or from faults in the Supplier's equipment - irrespective of whatever legal reason - shall be 12 months.
2. The statutory limitation period in accordance with Para. 1 shall apply also to all claims for compensation against the Supplier which are connected with fault, independently of the legal basis of the claim. Insofar as there are claims for compensation of any kind against the Supplier which are not connected with a fault, the statutory limitation period of Para. 1 shall apply to them also.
3. Paras 1 and 2 Clause 1 shall not apply in cases involving § 438 Para. 1 No. 1 and § 438 Para. 1 No. 2 of the Civil Code (BGB). These cases shall be subject to a statutory limitation period of three years.
4. The statutory limitation periods in accordance with Paras 1, 2 and 3 shall apply in accordance with the following:
 - a. The statutory limitation periods shall not apply in the case of deliberate action or in the case of malicious non-disclosure of a fault.
 - b. The statutory limitation period shall furthermore not apply to claims for compensation in cases of injury to life, physical integrity or health, in the case of claims in accordance with the Law on Product Liability (Produkthaftungsgesetz), in the case of grossly negligent violation of an obligation or in the case of the violation of significant contractual obligations.
5. The statutory limitation periods shall begin at the time of each transfer of risk.
6. Insofar as it is not expressly provided for otherwise, the statutory provisions in respect of the beginning of statutory limitation, the suspension of expiry, the suspension of and the renewed beginning of periods shall remain unaffected.
7. There shall be no change in the burden of proof to the disadvantage of the Purchaser involved in the above provisions.

XV. Exclusion of claims arising from a fault in the case of used items delivery, statutory limitation

1. Claims and rights on the basis of a fault in a used delivery item - irrespective of whatever legal reason - shall be excluded. This shall not apply in the case involved in § 438 Para. 1 No. 1 of the Civil Code (BGB) (legal infirmity in the case of real estate) or § 438 Para. 1 No. 2 of the Civil Code (BGB) (built structures, property for built structures). In the case of the above Clause 2, a statutory limitation period of one year shall apply.
2. The provisions on exclusion and statutory limitation in accordance with Para. 1 shall also apply to all claims for compensation against the Supplier which are connected with the fault, independently of the legal basis for the claim. Insofar as there are claims for compensation of any kind against the Supplier which are not connected with a fault, they shall be excluded.
3. Exclusion and the statutory limitation periods in accordance with Para. 1 and Para. 2 shall apply in accordance with the following:
 - a. They shall not apply in the case of deliberate action or in the case of malicious non-disclosure of a fault.
 - b. The statutory limitation period shall furthermore not apply to claims for compensation in cases of injury to life, physical integrity or health or freedom, in the case of claims in accordance with the Law on Product Liability (Produkthaftungsgesetz), in the case of grossly negligent violation of an obligation or in the case of the violation of significant contractual obligations.

4. Item **XIV**. Paras 5-7 shall correspondingly apply.
5. If assembly/start-up of the used delivery item is agreed at the Purchaser's work by the Supplier, the rights of the Purchaser in the case of faults in assembly/start-up (cf. Item **XI**. 10.) as well as the provisions on statutory limitation in Item **XIV**. shall remain unaffected in these Supplier's Conditions of Delivery.

XVI. Software

1. The Purchaser shall obtain permanently a simple, non-exclusive right of use with the agreed performance characteristics in unmodified form on the agreed equipment in respect of the Supplier's standard software as well as the pertinent documentation. The Purchaser may compile a back-up copy without express agreement. It shall not be permissible to award sub-licences.
2. The Purchaser may adapt the Supplier's own software products only to the legally permissible extent. The Purchaser may neither remove manufacturer's information – in particular copyright notices – nor change them without the prior written consent of the Supplier.
3. The Supplier shall not be obliged to transfer the source code on which the respective software product is based.
4. The General Terms and Conditions of Business have prior application for the software products of other suppliers which are included in the scope of delivery. If these should not be available, the Supplier will send them to the Purchaser on request.
5. The Supplier's Conditions of Delivery shall apply as a supplement to the General Terms and Conditions of Business of the software suppliers. In the case of the ineffectiveness of the General Terms and Conditions of Business of the software suppliers, solely the Supplier's Conditions of Delivery shall apply.

XVII. Insurance policy claims

1. Insofar as the Supplier has, as an additionally insured party, immediate claims against the Purchaser's insurance company in respect of the delivery item, the Purchaser shall now provide the Supplier with his consent to enforcing these claims.

XVIII. Place of jurisdiction, applicable law, place of fulfilment

1. In the event of the Purchaser being a trader, the sole place of jurisdiction shall be the Supplier's seat of business in the case of all disputes arising directly or indirectly from the contractual relationship. The Supplier shall be, however, also entitled to file proceedings at the Purchaser's seat of business.
2. German law shall apply to the legal relationships between Purchaser and Supplier, excluding the referral standards of international private law as well as excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Insofar as the confirmation of order does not provide for otherwise, the Supplier's seat of business shall be the place of fulfilment.

XIX. Concluding provisions

1. §§ 126, 126a of the Civil Code (BGB) shall apply to the written form within the meaning of these Conditions of Delivery.
2. The contract shall remain binding in its other parts even in the event of the legal ineffectiveness of individual provisions of these Conditions of Delivery. This shall not apply if maintenance of the contract would represent an unreasonable hardship for one party.
3. The Purchaser has to bear the cost of all taxes, fees and charges in connection with a delivery to countries outside the Federal Republic of Germany and, if necessary, to reimburse to the Supplier.
4. The Purchaser has to obtain at his own expense the permits necessary for his use of the delivery item and/or export and import documents.
5. Personal data shall be stored by the Supplier in compliance with the statutory provisions.

Hilger u. Kern GmbH
Käfertaler Straße 253
68167 Mannheim
Germany

Tel.: 0621-3705-0
Fax: 0621-3705-200
Mail: info@hilger-kern-group.com
Homepage: <https://www.hilger-kern-group.com/>

**Authorised
representatives**
Steffen Knaus,
Daniel Geier,
Dr. Mike Wehmeier

Register court Mannheim
Nr. HRB 537
VAT.-ID.-No.
DE 143840725