

## General Terms and Conditions of delivery

1. These General Terms and Conditions of Delivery apply to all our proposals, declarations relating to legal transactions, sale contracts and contracts for works and services, including the provision of consultancy and other contractual services. They apply exclusively. Adverse or differing terms and conditions are hereby explicitly controverted. These General Terms and Conditions of Delivery also apply if we deliver unreservedly whilst aware of the Customer's differing terms and conditions.
2. In the event of an ongoing business relation, these General Terms and Conditions of Delivery likewise apply to all future transactions with the Customer, unless differing terms and conditions are explicitly accepted. Furthermore, these General Terms and Conditions of Delivery also apply to all agreements arising as a consequence of a concluded sale or works contract, such as e.g. servicing or repair contracts.
3. Exclusively our written order confirmation is binding for the description of the scope and nature of our deliveries, goods and services. If an order is to be qualified as an offer as defined in § 145 of the BGB (German Federal Civil Code), we can accept this within four weeks.
4. We deliver "ex works" and arrange despatch in the name of and by order of the Customer.
5. All information regarding the properties of delivery goods in prospectuses, catalogues, advertisements or in our correspondence prior to the offer and on VDI (German Engineers Association) layout plans is only approximate, unless explicitly stated as binding in our offer or our order confirmation. The same applies to photos, drawings and other illustrations.
6. We reserve the right to modify the design and the form during the delivery period, provided this does not fundamentally change the delivery goods, their function and appearance, and provided the modifications are reasonably acceptable to the Customer. Clause 22 of these General Terms and Conditions of Delivery applies in the event of any price adjustments.
7. Performance data refer to operation at an air temperature of + 20°C, a level concrete floor conforming to our specifications and dry operating conditions. They do not extend to acceleration times. Even under the aforementioned conditions, deviations from the performance data are also admissible in the usual tolerance range.
8. We reserve the unrestricted proprietary rights and copyrights regarding cost estimates, drawings and similar documents (hereinafter referred to as "the documents"). The documents, including parts thereof, may be made accessible to third parties only with our prior written consent and must be returned to us immediately and unsolicited if a contract should not materialise.
9. We take haulage packing of the delivery goods back at our delivery factory. When returning haulage packing must be clean, free of foreign substances and, where applicable, also sorted into different packing materials. Otherwise we are entitled to claim from the Customer the additional costs incurred.
10. If a delivery period has been agreed, it shall commence when the order confirmation has been sent, but not before the information, documents, licences and clearances to be supplied by the Customer and the agreed down payment have been received. Nor shall the delivery period commence before all technical questions of crucial importance to the contract performance have been clarified. In case of approximate data or the like in particular, the order confirmation is binding. If this should also contain only approximate data, the Customer must have binding delivery periods confirmed by us separately. If a delivery date has been agreed, the aforementioned stipulations apply accordingly; if the prerequisites stated above for the delivery period have not been satisfied by the time the order confirmation is sent, the date for delivery is postponed by a corresponding period of time.
11. If the Customer raises additional request or wishes modifications relating to the delivery goods after the order has been confirmed, this requires an adjustment to the contract agreed by both Parties (delivery goods, delivery date, purchase price, etc.).
12. With "ex works" deliveries, the delivery period or delivery date has been complied with when the readiness for despatch has been communicated before the end of the period/date.
13. The delivery period is extended commensurately in the event of measures taken during industrial disputes, in particular strike and lockout, the occurrence of Force Majeur, governmental orders or in the occurrence of unforeseen circumstances beyond our control, provided they have an effect on the completion or delivery of the delivery goods. The same applies if these circumstances occur at our sub-suppliers or subcontractors. Nor are we responsible for the aforementioned circumstances if they occur during an already existing delay. In important cases we shall notify the Customer as soon as possible of the beginning and end of such circumstances. If as a result of such unforeseen circumstances the delivery of the delivery goods becomes impossible or if delivery is possible only at considerable additional expenses, we are entitled to cancel the Contract in addition to our statutory rights.
14. Partial performances are admissible. Every partial performance is deemed an autonomous transaction that we can invoice separately.
15. If, due to our default we should be in delay with our delivery, the Customer is entitled to claim for the

- loss or damage it sustained resulting from the delay for each completed week of the delay a lump sum compensation amounting to 0,5 % of the value of such part of the delivery that cannot be used on time or according to the Contract, but no more than 5 % of the net value of the order in total.
16. If there is a delay in delivery and the customer grants us a fair and reasonable period of grace with an explicit written declaration that he will decline acceptance after the period of grace, and if we are in default in not complying with the period of grace, the customer is entitled to rescind the contract.
  17. Subject to the provisions of Clause 48, the Customer is not entitled to any further rights or remedies for delay, in particular claims for damages.
  18. If the Customer should wish a later delivery date than that contractually agreed upon and we consent to such postponement, the Customer shall be charged the cost incurred by storage – in the event of storage at our factory no less than 0,5 % of the net value of the order for each month. We are also entitled, after a reasonable time limit set by us has passed to no avail, to dispose otherwise of the delivery goods and to deliver to the Customer with an appropriately extended time limit.
  19. In the event of delivery “ex works”, the Customer is obliged to request delivery of the delivery goods upon being notified that they are ready for despatch, or in the event of agreed delivery to the designated place to accept if upon delivery. If the Customer should fail to comply with this obligation, he is required to bear the additional costs incurred (e.g. storage and maintenance costs). Once a reasonable time limit set by us has passed to no avail, we may rescind the contract and dispose of the delivery goods otherwise and claim damages notwithstanding any other claims we might have. In the event of a serious and definite refusal on the part of the Customer to accept the delivery goods, it is not necessary to set a time limit. The risk of accidental loss or fortuitous deterioration in the delivery goods is transferred to the Customer at the moment the Customer is in delay with the acceptance of the delivery. When requested and against advance payment by the Customer, we are prepared to arrange for the insurance coverage requested by the Customer.
  20. If at his explicit request works on orders of the Customer are terminated, the Customer is obliged to pay within four weeks of the statement of account of the works carried out on the orders the invoiced amount minus payments already made.
  21. The prices are “ex works” plus the statutory sales tax applicable on the day the invoice is raised and exclude packaging, which is charged separately. Amounts invoiced must be paid immediately without any deduction.
  22. If our price lists change after the order has been confirmed, the price lists valid on the delivery date apply, provided there is a period of at least four months between the signing of the Contract and the delivery date and we are not responsible for any potential delay in the delivery.
  23. All expenses connected to the delivery such as transport insurance, loading and conveyance, customs duties and TÜV (Technical Inspection Board) fees shall be borne by the customer unless agreed otherwise.
  24. In the event of delay in payment, interest shall be charged from the due date at the rate of 8 % on top of the European Central Bank’s base rate, notwithstanding any greater loss or damage caused by default and any other claims. The Customer is at liberty to prove lesser loss or damage to us.
  25. Orders to pay, cheques and bills of exchange are accepted only upon explicit agreement and only as conditional payment until honoured, but are not deemed already as payment. Bills of exchange must be discountable, any collection and discount expenses being charged to the Customer.
  26. The Customer is entitled to set-off and rights of retention against our claims only if the Customer’s Counterclaims are established by binding court order, uncontested or acknowledged by us.
  27. Payments may be made only directly to our head office in Garlstorf and not to our branches or our salesmen or representatives. In any event payment is only deemed made once it is received by our head office.
  28. We retain full title of all delivery goods until the Customer has discharged all our payment claims arising from the business relationship with the Customer (reserved goods). In case of an open account, all the reserved goods serve as guaranty for any outstanding amounts.
  29. Provided the Customer uses the reserved goods at his own factories, he is not permitted to resell, pledge or transfer ownership by way of security of all or parts of the reserved goods without our express prior consent in writing, as long as the retention of title exists.
  30. If a customer has acquired reserved goods for the purpose of resale, he is permitted to do so in the normal course of business. Whenever reserved goods are resold, the Customer assigns to us already now his entire future claims against his buyer arising from such resale. We hereby accept this assignment. The Customer shall be authorised to collect any receivables. We are also entitled to do so; although we shall not do so until the Customer fails to comply with his payment obligations or if there is deterioration in his financial position which jeopardises his payment obligations. This is the case, for instance, if the Customer applies for insolvency proceedings. In this event the Customer is required to provide us upon first demand with all information and documents necessary for collection.
  31. If the value of the guarantees arranged for in our favour should exceed our payment claims against the Customer by more than 20 %, we are insofar obliged upon request of the Customer to release

- guarantees of his choice.
32. The Customer is obliged, to notify us immediately in writing of any measures for executing enforceable instruments against reserved goods and to send us copies of garnishee orders and garnishee records. Furthermore, the Customer is required to do his utmost to avert the implementation of an execution. In the event of our bringing a third-party action against execution under § 771 of the ZPO (German Federal Code of Civil Procedure), the Customer is obliged to reimburse us the court and out-of-court cost if the third party is not in a position to do so.
  33. In case the Customer is in delay with the payment of the purchase price, we are entitled to take possession of the reserved goods after a reasonable period of grace set by us has passed to no avail. If the reserved goods should be in the possession of a third party, the Customer is obliged upon first demand to communicate the whereabouts of the reserved goods and agrees that we take possession of the reserved goods in this case.
  34. If we should assert our right of title to the reserved goods, take possession of them or pledge them, this shall not be deemed as a rescission of the Contract unless we have explicitly declared such rescission.
  35. An application for insolvency proceedings being initiated against our Customer's assets entitles us to rescind the contract and to request the immediate return of the reserved goods.
  36. In the case of defects of the delivery goods we warrant as follows: As a matter of principle we do not give any guarantee as to the durability of nor any other guarantee for the delivery goods. As a consequence, none of our description, representations or other statements – either before or during the execution of the Contract – has the nature of a guarantee.
  37. Notices of defects are to be addressed to us in writing in compliance with § 377 of the HGB (German Federal commercial Code).
  38. All those parts of the delivery goods which are proven to have been defective upon passing of the risk to the Customer, will according to our choice be either repaired or redelivered free of charge. We gain ownership of all such parts exchanged during this rectification upon their removal. The Customer is required to grant us sufficient time and opportunity for such rectification.
  39. We shall bear the cost of rectification we incur.
  40. Should the rectification fail, the Customer is entitled to opt for having the agreed purchase price reduced or for the rescission of the Contract. If the Customer should choose to rescind the Contract, the Customer shall waive the entitlement to compensation claims and to reimbursement of expenses unless we have intentionally failed to disclose the defect.
  41. In the case of a guarantee we are liable only to the extent to which the precise intention of the guarantee was to secure the Customer against the loss or damage sustained.
  42. Subject to the provisions in Clause 48, there are no further claims, in particular not for reimbursement of expenditures fruitlessly spent or compensation claims.
  43. The period of limitation for defects in new delivery goods is 12 months counting from the transfer of risk. Unless otherwise expressly agreed, the Customer's claims in the event of defects in used delivery goods are precluded.
  44. We do not assume any responsibility for any consequences of the following circumstances: unsuitable or improper use, in particular overstress, faulty installation or putting into operation by the Customer or third parties, wear and tear or typical wear from use, defective or negligent treatment, failure to carry out maintenance or maintenance not carried out in conformity with the regulations and our operating instructions, unsuitable equipment and facilities and spare parts, faulty construction work, unsuitable building ground, chemical, electrochemical or physical influences.
  45. If the Customer or third parties should effect modifications or repairs to the delivery goods in an improper way without our prior express consent, any warranty claims for such works and for any consequences resulting therefrom shall be excluded.
  46. For defects in title of the delivery goods we warrant as follows: We are obliged to deliver the delivery goods free of any industrial property rights and copyrights of third parties. If third parties should lodge legitimate claims arising from an industrial property right or a copyright against the delivery goods or parts thereof, we shall at our discretion and expense in relation to the delivery goods concerned either obtain a right of use, modify them to the effect that the property right or copyright is not infringed or exchange the delivery goods or parts thereof. If we should be unable to do so at fair and reasonable conditions, the Customer is entitled to the statutory rights of rescission of the Contract. Subject to the provisions in Clauses 47 to 50, the Customer is not entitled to raise any claims for reimbursement of expenditures fruitlessly spent or compensation claims.
  47. If the Customer is unable to use the delivery goods in conformity with the contract due to our culpable failure to properly implement suggestions made, instructions or advice given by us either before or after the execution of the Contract or through other breaches of duty we are responsible for, in particular owing to our operating or maintenance manuals for the delivery goods, the provisions of Clauses 36 to 46 as well as 48, 49 and 50 apply accordingly, to the exclusion of all other claims of the Customer.

48. For damages outside the delivery goods themselves (in particular for loss of profit, loss of production, other indirect or consequential damages or financial loss or reimbursement for expenditures fruitlessly spent), we assume liability, irrespective of the legal basis, only in the following cases: - Wilful misconduct, - Gross negligence on the part of legal representatives of senior executives, - Defects intentionally undisclosed or such defects whose absence we have guaranteed (in this case however only to the extent to which the precise intention of the guarantee was to secure the Customer against the loss or damage sustained), - Bodily injury, damage to health or loss of life, - Claims under the German Federal Product Liability Act.
49. If we should fail to comply with essential contractual duties due to reasons we are responsible for and this should jeopardise the achievement of the purpose of the contract or render it impossible, we are also liable in case of gross negligence of non-senior executives and in the event of ordinary negligence. In the latter case, however, our liability is limited to compensation for foreseeable loss or damage typical for the Contract concluded.
50. Further claims are expressly excluded.
51. The Customer's claims against us cannot be assigned.
52. The place of performance is the domicile of our factory, which has made the delivery goods available for despatch or despatched them.
53. The Customer bears the risk of fortuitous loss of or damage to the delivery goods from the moment they are released for despatch/for transportation (§447 Para. 1 of the BGB – Germany Federal Civil Code), and irrespective of any obligations to tender services, such as installation.
54. The place of jurisdiction for all disputes is Winsen (Luhe), if the Customer is a merchant, a public legal entity or a special fund under public law, or if the Customer has no place of jurisdiction within Germany.
55. German law as applied between domestic contractual partners shall exclusively govern all legal relations between the Customer and us.
- 56.

DEUTRUCK GmbH  
Fördertechnik