

General Terms of Delivery

The following terms of delivery of ASSCON Systemtechnik Elektronik GmbH (herein below referred to as ASSCON) apply exclusively to entrepreneurs, legal persons under public law and special assets governed by public law. The Buyer's conditions that deviate from these general terms of delivery are only valid if they have been expressly confirmed by ASSCON in writing.

§ 1 - Conclusion of contract and performance

1. Offers by ASSCON are always subject to change and are non-binding. Brochures, circulars and other product descriptions do not constitute offers for the conclusion of a contract.
2. The Buyer will receive a written order confirmation from ASSCON. The contract between the Buyer and ASSCON is concluded when the written order confirmation is received by the Buyer.
3. The scope of contractual performance is determined based on the content of the written order confirmation.
4. ASSCON retains the exclusive proprietary rights and copyrights to all cost estimates, drawings, offers and other documents that it has prepared. All documents mentioned above are intended exclusively for the respective Buyer and may not be forwarded to third parties without the previous consent of ASSCON. If requested by ASSCON, these documents must immediately be handed over to ASSCON.
5. The Buyer has the non-exclusive right to use standard software with the agreed performance characteristics in unchanged form on the agreed equipment.

§ 2 - Prices and terms of payment

1. All prices are calculated ex works, exclusive of packaging and transport costs, plus the value-added tax under applicable law. Customs duties and applicable turnover tax on imports shall be paid by the Buyer. If desired by the Buyer, deliveries by ASSCON can be insured against the customary transport risks, at the expense of the Buyer.
2. If ASSCON has agreed to carry out assembly and installation, and if nothing has been agreed to the contrary, the Buyer must pay, in addition to the agreed remuneration, all additional expenses that accrue, such as travel costs, costs for the transport of installation tools and personal luggage and per diems.
3. All invoices by ASSCON are due for payment, without deduction, within ten days after the invoice date.
4. Payments must be paid in such a way that no costs or fees accrue for ASSCON. Bills of exchange will not be accepted by ASSCON as payment.
5. The Buyer is only authorized to offset the charges if its claims have been determined to be legally valid or if they are not contested by ASSCON.

§ 3 - Reservation of title

1. The items to be delivered remain the property of ASSCON until all claims by ASSCON regarding the ongoing business relationship have been paid in full. If the value of all security interests due to ASSCON exceeds the amount of all secured claims, ASSCON will, if requested by the Buyer, release a corresponding part of the security interests.
2. During the existence of the reservation of title, the Buyer is not entitled to pledge the products or transfer them by way of security. During the existence of the reservation of title, the Buyer must handle the items to be delivered with care. If inspection or maintenance work is necessary, the Buyer must execute such work at its own cost.
3. In case of pledged attachments, confiscations or other stipulations or interventions on the part of a third party, the Buyer must immediately inform ASSCON.
4. Processing or alteration of the items to be delivered by the Buyer will always be carried out for ASSCON. If the items to be delivered are processed together with other products that do not belong to ASSCON, ASSCON acquires co-ownership of the new product in proportion to the value of the items to be delivered to the other processed products at the time of processing or alteration. The same applies if the items to be delivered are mixed with other items that do not belong to ASSCON. If the Buyer's object is to be seen as the principal object, then the Buyer transfers proportionate co-ownership.

§ 4 - Delivery times and times for performance

1. Adherence to the agreed delivery periods assumes the timely receipt of all documents, necessary authorizations and releases, especially plans, as well as the observance of agreed payment conditions and other obligations on the part of the Buyer. If these conditions are not fulfilled, the delivery periods will be correspondingly extended; this does not apply if ASSCON is responsible for the delay.
2. Force majeure and events that substantially hinder or make impossible provision of the contractual performance (hindering events) - this includes especially strikes, lockouts, official directives, etc., even those that occur at ASSCON's suppliers and their sub-suppliers - will extend the delivery and performance periods by the duration of the hindrance plus an adequate start-up time. This does not apply if ASSCON is responsible for the occurrence of the hindering events.

The period of extension also applies if the hindering events occur at a point in time when ASSCON is behind schedule. This does not apply if ASSCON is responsible for being behind schedule.

Instead of making use of the extension of the delivery and performance periods, ASSCON is optionally authorized to withdraw from all or part of the contract due to non-fulfilment of part of the contract. In this case, ASSCON will immediately inform the Buyer about the non-availability of the items to be delivered and will immediately reimburse the Buyer for payment that he has already made.

§ 5 - Passing of risk

1. The risk passes to the Buyer when the items to be delivered have been transferred to the persons executing transport or have left or been collected from ASSCON's factory for shipment.
2. The same applies to the transfer, shipment or collection of the items to be delivered if they are delayed for reasons attributable to the Buyer or if the Buyer is in default of acceptance for other reasons.

§ 6 - Assembly and installation work, acceptance

If ASSCON has undertaken to assemble and install the items to be delivered, the following conditions apply, provided that no other provisions have been made in writing:

1. The Buyer must assume the costs incurred in a timely manner and provide the following:
 - a) all excavation work, construction work and other work from other sectors, including the necessary skilled labour, non-skilled workers, building materials and tools;
 - b) the required commodities and materials, that are required for assembly and start-up, such as scaffolding, hoisting gear and other devices;
 - c) energy and water at the place of usage, including all connections and lighting that are necessary for operation of the items to be delivered;
 - d) sufficiently large, suitable, dry and lockable rooms for storing the machinery, equipment, materials, tools, etc., and suitable work and amenity rooms for the installation personnel; furthermore, in order to protect ASSCON's property and its installation personnel on the construction site, the Buyer must take those measures that correspond to the required level of care during usage, while observing currently valid statutory regulations;
 - e) protective clothing and protective devices that are necessary due to special conditions encountered at the installation location.
2. Before beginning with installation work, the Buyer must, in a timely manner and without being prompted to do so, make available the necessary information regarding the location of concealed electric cabling and gas, water and similar piping, as well as provide structural information.
3. Before beginning with assembly or installation work, the items to be delivered, as well as the required supplies or objects that are necessary for starting execution of the work must be at the location of assembly or installation and all preliminary work before beginning installation work must have been carried out to the extent that assembly or installation work can be started and carried out without interruption.
4. If assembly, installation or commissioning work is delayed for reasons not attributable to ASSCON, the Buyer must bear the costs for the waiting period as well as for any necessary additional travel by the installation personnel.

5. Acceptance must take place following commissioning (operability after completed assembly and installation). Should this in exceptional cases not be possible, the Buyer must carry out acceptance within a period of two weeks. If this is not done on time, acceptance is deemed as having been performed if the items to be delivered have been taken into use.

§ 7 – Warranty in case of defects

ASSCON is liable as follows for any defects in the items to be delivered:

1. At its own discretion, ASSCON assumes warranty for any defect, either by remedying the defect or by manufacturing and delivering fault-free items to be delivered (remedial action).
2. If remedial action fails, the Buyer can, at its own discretion, either reduce the remuneration (reduction) or rescind the contract. In case of any insubstantial breach of obligations, especially in the case of insubstantial defects, the Buyer, however, is not entitled to rescind the contract.
3. ASSCON shall be informed about obvious defects within a period of two weeks after delivery of the items to be delivered, and in the case of assembly and installation work, from the date of acceptance. If not, any warranty claims may not be asserted. For observance of these deadlines, timely notification shall suffice.
4. If the Buyer chooses to rescind the contract due to a material defect or a defect in title after failed remedial action, he is not entitled to assert any additional claims for damages due to the defect.

If after failed remedial action, the Buyer chooses to claim for damages, the items to be delivered shall remain with the Buyer if this is reasonable. Claims for damages are limited to the difference between the agreed compensation and the value of the defect items to be delivered. This does not apply if ASSCON has breached the contract fraudulently.

5. The warranty period is for one year, beginning on the date of delivery of the items to be delivered and, if assembly and installation work is performed, beginning at the time of acceptance. This does not apply if the Buyer has not reported the defect in a timely manner (Clause 3 of this provision). Furthermore, the warranty period of one year does not apply in case of claims for damages due to a defect if ASSCON has acted fraudulently.
6. The condition of the items to be delivered is exclusively defined in the product description and in the agreements specified in the order confirmation. Public statements, brochures and circulars do not constitute any agreement regarding the condition of the items to be delivered.
7. The Buyer will not receive any guarantees from ASSCON in legal terms.
8. Warranty does not cover natural wear and tear and damages that arise after the passing of risk due to incorrect or neglectful handling, excessive usage, unsuitable equipment, defective or unsuitable locations or special exterior influences that are not assumed in the contract, or due to non-reproducible software defects. If improper alterations or repairs are made by the Buyer or by a third party, then such alterations or repairs and the resulting consequences will not be covered by warranty.

§ 8 - Liability

1. ASSCON is liable for any negligent or intentional breach of the main contractual obligations (cardinal obligations), especially of obligations whose breach would violate the purpose of the contract or weaken the essential rights of the Buyer or essential obligations of ASSCON, or of obligations without which proper execution of the contract would not be possible.
2. In all other respects, ASSCON is merely liable for intentional or grossly negligent behaviour on the part of ASSCON, its legal servants, agents and employees. This also applies to all cases of non-enforceability, delay, positive breach of contract, tort claims as well as negligence as per conclusion of the contract.
3. ASSCON's liability for claims for damages is limited to contractually typical anticipatable damages, unless ASSCON is liable due to grossly negligent or intentional breach of cardinal obligations.
4. The above liability limitations do not apply if ASSCON is liable based on the Product Liability Act, or on the basis of any other manufacturer's liability. They also do not apply in case of any liability that is based on a guarantee that has been assumed by

ASSCON or on a procurement risk on the part of ASSCON, as well as in the case of any liability due to any injury to life, body or health. The above liability limitations also do not apply if ASSCON has third-party liability insurance coverage for special risks.

§ 9 - Commercial property rights and copyrights

If a third party asserts justified claims against the Buyer due to a breach of a commercial property right or a copyright through items to be delivered that are delivered by ASSCON and used according to the contract, ASSCON is liable toward the Buyer as follows:

1. At its own discretion and expense, ASSCON will either choose to obtain a right to use the item to be delivered, alter the item to be delivered so that the property rights are not violated, or replace the item to be delivered. If it is not possible for ASSCON to do this under reasonable conditions, ASSCON will take back the item to be delivered in return for the agreed remuneration.
2. ASSCON's obligations, as specified above, are only valid if the Buyer immediately informs ASSCON in writing about the claims asserted by a third party, if the Buyer does not acknowledge a breach and if all defence measures and settlement negotiations remain open to ASSCON. If the Buyer ceases to use the items to be delivered for the mitigation of damages or other important reasons, he is obliged to inform the third party of the fact that the cessation of usage does not constitute an acknowledgment of any infringement of property rights.
3. The Buyer's claims are excluded if he is responsible for the infringement of property rights.

The Buyer's claims are also excluded if the infringement of property rights is caused by special requirements on the part of the Buyer, by usage that is not foreseeable by ASSCON or because the item to be delivered has been altered by the Buyer or used together with products that have not been delivered by ASSCON.

4. Further claims against ASSCON regarding property rights are excluded; § 8, however, remains unaffected as does the right of the Buyer to rescind the contract.

§ 10 - Buyer's duty of notification

The Buyer shall immediately inform ASSCON if the items to be delivered or parts thereof are taken to the legal territory of the United States of America, Canada or Australia, in order to enable ASSCON to determine if the items to be delivered conform to the respective product assurance and product liability regulations. The same applies if the Buyer resells or otherwise transfers the items to be delivered or parts thereof to a customer who takes or wants to take them to the legal territory of the United States of America, Canada or Australia.

§ 11 - Jurisdiction and applicable law

1. If the Buyer is an entrepreneur, a legal person under public law and separate assets under public law, Augsburg will be the exclusive place of execution for all mutual claims and, for all disputes from proprietary claims between ASSCON and the Buyer, the Augsburg County Court is agreed to be the court of jurisdiction, unless a different exclusive place of jurisdiction is justified.
2. German law applies exclusively for the contractual relations.

09/2002