



General Contractual Terms for the Supply and Erection of Weighing Equipment and Accessories and for Work Performed

For use for:

1. a person who is entering into the contract in the course of performance of his or her commercial occupation or self-employed profession (entrepreneur);
2. public law bodies or a public-law special fund.

I. General

1. All performance is based on these Terms and on any separate contractual agreements. Any differing terms of purchase of the purchaser will not become part of the contract, even upon acceptance of an order. If nothing is specifically agreed to the contrary, the contract will be deemed made upon written confirmation of the order by the supplier.
2. The supplier reserves the property rights and copyrights to samples, cost estimates, drawings and similar information of a physical or non-physical nature - including that in an electronic form; the above must not be made available to third parties. If the purchaser designates information and written material as confidential, the supplier undertakes not to make the same available to third parties without the consent of said purchaser.
3. If the supplier has also been requested to calibrate a weighing system that is scheduled to be installed, this shall be considered a separate order, even if listed as an item in the principal order.

II. Prices and Payment

1. If nothing is specifically agreed to the contrary, prices shall apply ex works including loading at works but excluding toll charges, packaging and unloading (net free to construction site). Value-added tax at the statutory rate applicable at the time will be added to the prices if no evidence of exemption from value-added tax is submitted.
2. The prices quoted are based on the currently applicable wage and material costs. If there is a change in the cost basis before the date of performance, the supplier reserves the right to adjust prices accordingly.
3. The purchaser accepts electronic billing and despatch, except as otherwise agreed in an individual case. When choosing the invoice in paper form the additional costs in the amount of 5 € will be charged.
4. The purchaser only has the right to withhold payments or offset them against counter-claims if such claims are undisputed or have finally been established by a court of law.
5. Electrical and electronical components, respectively spare parts, e.g. load cells, circuit boards and other modules as well as complete units, which are not mounted by us or one of our certified and authorised dealers are excluded from return, from acceptance of returned goods and from replacement! Such goods are delivered unexceptionally only against prepayment.

III. Time of Performance, Delay in Supply, Impossibility of Performance, Non-Acceptance of Delivery, Cancellation of Dates and Lump-Sum Compensation

1. The time of performance will be specified in the agreements made between the contracting parties. Performance shall not become due until all commercial and technical matters have been settled by the contracting parties and the purchaser has met all his obligations, such as provision of the necessary public-authority certificates or approvals or making an advance payment. If these conditions have not been fulfilled, the time of performance shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.
2. Observance of the time of performance is subject to correct and on-time supply to the supplier itself. The supplier will give notification of anticipated delays as soon as possible.

3. The time of performance is deemed observed if, by the time it ends, the parts scheduled for supply or, respectively, the construction materials have left the supplier's works or those of the commissioned supplier or if notification of readiness for shipment has been given. As far as acceptance has to take place - except of refusal of acceptance - the acceptance date is crucial, alternatively the notification of readiness.

4. If the delivery of parts or construction materials, or the acceptance, is delayed for reasons for which the purchaser is responsible, the costs incurred by the delay will be charged to said purchaser, beginning one month after notification of readiness for shipment was given.

Costs for storage will be charge in the amount of a lump sum of 0,5 % of the purchasing price per month, max. however 5%, month that have started pro rata temporis. Assertion and evidence of higher or minor damage remains reserved for both sides.

5. If the non-observance of the delivery date can be traced back to force majeure, industrial disputes or other occurrences which are beyond the control of the supplier, the delivery time is extended appropriately. The supplier will inform the purchaser about beginning and end of such occurrences.

6. If the purchaser sets the supplier a reasonable deadline for the performances - with due consideration of the legal exceptions – and if this deadline is not kept, the purchaser is entitled to withdraw the contract within the scope of legal regulations. He is obliged to explain within a reasonable period of time, whether he exercises his right of withdrawal. Further claims resulting from default of performance and impossibility of fulfilling the contract are defined exclusively in article VII.1 of this term.

7. In case of non-acceptance of the supplied item by the purchaser the supplier can make use of his legal rights. If he claims for compensation it is a flat of 20% of the purchase price. Assertion and evidence of higher or minor damage remains reserved for both sides.

8. If the contract is reversed the supplier is entitled to compensation for the duration of transfer of use of the supplied item. This corresponds sweepingly to the usual monthly rent of a comparable item, possibly pro rata temporis. Assertion and evidence of higher or minor damage remains reserved for both sides.

9. If appointments are cancelled by the purchaser the costs resulting (e.g. calibration truck, calibration fees, travelling costs) will be charged, additional administration costs plus an appropriate handling fee.

IV. Passage of Risk, Acceptance

1. The risk shall pass to the purchaser when the item to be supplied has left the works; this shall also apply if partial supplies are made or if the supplier has also assumed responsibility for other services, e.g. shipment costs or delivery and erection. Insofar as there is to be acceptance of parts of performance agreed under a works contract, this acceptance shall be the criterion for the passage of the risk for the work concerned and must be performed immediately on the acceptance date agreed or, alternatively after the supplier has given notification of completion of performance. The purchaser is not entitled to refuse acceptance if there is a defect that is not of major significance. The supplier has the right to require partial acceptance of partial services that are ready for acceptance.

2. If shipment or acceptance is delayed or fails to be performed as a result of circumstances for which the supplier cannot be held responsible, the risk shall pass to the purchaser as of the date of notification of readiness for shipment or respectively completion of performance. The supplier undertakes to take out insurances required by the purchaser, at his expenses.

3. Partial performance is permitted, provided that the purchaser can be reasonably expected to accept it.

V. Reservation of Title

1. The supplier reserves the title to the supplied items - provided that they do not become part of a real property - until receipt of all payments under the contract, including those for any subsidiary services also rendered. These items include in particular all weighing equipment, together with hardware and software.
2. The supplier is entitled to insure the item to be supplied at the purchaser's expenses against robbery, breakage, fire, water and other damages, unless the purchaser can prove that it has itself taken out such insurance.
3. The purchaser may neither sell, nor pledge or collateralize the goods. In the event of attachment or other forms of seizure by third parties, the purchaser must notify the supplier in writing immediately, so that the latter can instigate suitable legal remedies, in particular legal action under Section 771 of the German Civil Procedure Code (ZPO). The purchaser shall be liable for the costs thus incurred, if no reimbursement can be obtained from the third party.
4. The purchaser is granted revocably permission to resell the item to which the title is reserved only in the context of a proper business. On request of the purchaser he must supply name and address of the third-party purchaser. The purchaser assigns by precaution in advance all claims which he holds from the resale of the item to which the title is reserved or for any other legal reason related to them. The supplier revocably authorizes the purchaser to collect in his own name the claims assigned to him. In the event of self-caused outstanding payment and if circumstances become known that may reduce the purchaser's credit standing and prejudice the pledged collateral, the supplier can revoke authorization of resale and collection of assigned claims. In such cases, the purchaser must provide the supplier at the latter's request with all the written material and data that will enable him to assert its collateral rights itself and collect the claims itself.
5. If the purchaser acts in a way contrary to the contractual obligations, in particular in the event of a default in payment, the supplier is entitled to recover the item of supply after issuing a reminder and the purchaser is obliged to surrender it. A right of the supplier of withdrawal from the contract remains unaffected.

VI. Warranty

The purchaser shall be liable for material defects and defects of title of the delivery, to the exclusion of further claims. – subject to Section VII – as follows:

1. The warranty period is 12 months, beginning with the hand-over of the supplied items to the purchaser. The warranty period for construction work and concrete parts is governed by the works contract law in the German Civil Code (BGB).
2. At its discretion, the supplier can either rework any defects or supply a non-defective substitute item, provided that the defect already existed on passage of risk. The supplier must be notified immediately in writing when such defects are discovered. Replaced parts shall become the property of the supplier.
3. In agreement with the supplier, the purchaser must allow a reasonable period to give the supplier the necessary time and opportunity for performance of all the reworking and replacements which said supplier considers necessary; if this is not the case, the supplier shall be exempted from liability for the consequences that may result. Only in urgent cases where there is a risk of operational safety, respectively to prevent disproportionate damage, of which the supplier must be notified immediately, the purchaser has the right to rectify the fault himself or to have it rectified by third parties and to demand compensation for the expenses necessary.
4. The supplier bears the direct costs resulting from reworking or replacement - provided that the complaint proves to be justified - the costs of the substitute item including shipment. In addition, the supplier will pay the costs of removal and new installation and the costs of any necessary provision of the required fitters and assistants including travel costs, unless this would constitute an unreasonable burden for the supplier. The latter does not apply if the installation/erection/commissioning was not carried out by the supplier. In this case, the

purchaser shall be responsible for the costs of working hours and travelling times incurred in connection with the installation of parts replaced or reworked under a warranty. The supplier will not pay the costs of any necessary calibration.

5. The purchaser has the right within the scope of statutory provisions to withdraw from the contract, if the supplier – taking account of the statutory exceptions – expires an appropriate deadline set for repair or replacement fruitlessly due to a material defect. If the defect is only of minor nature the purchaser is only entitled to reduce the contract price. The right to reduce the contract price otherwise remains excluded.

6. Further claims shall be governed exclusively by Section VII, 1 of these terms.

7. No warranty shall be given and no liability accepted in the following cases in particular:

Inappropriate or incorrect application, incorrect installation respectively commissioning by the purchase or third parties, normal wear, incorrect or negligent treatment, improper maintenance, inappropriate operating material, defective construction works, unsuitable foundation, chemical (e.g. leaches or acids), electro-mechanical, electromagnetic or electrical influences – provided that the supplier is not responsible for them.

8. If the purchaser or a third party makes improvements or modifications at the item delivered without prior written approval of the supplier, the supplier is not liable for the consequences resulting thereof.

VII. Liability of the Supplier, Disclaimer

1. The supplier shall only be liable - irrespective of the relevant legal reasons - for damage not incurred to the supplied item itself in the following cases:

- a) in the event of intent,
- b) in the event of gross negligence on the part of the owner/company organs or executive staff,
- c) in the event of culpable injury to life, body, health,
- d) in the event of defects concealed by said supplier with malicious intent,
- e) under a warranty undertaking,
- f) in the event of defects in the supplied item if the supplier is liable under the Product Liability Act for personal injury or property damage to privately used items.

2. If major contractual obligations are culpably breached, the supplier will also be liable for gross negligence by non-executive staff and for ordinary negligence, in the latter case limited to the damage typical of the contract which could reasonably be foreseen. Any further claims, particularly for damages for reason of loss of production and loss of profits, are ruled out.

VIII. Permits

PWB cannot be held responsible for obtaining/provision of official permits concerning assembly and operation of the equipment and components delivered. Therefore responsible is the purchaser and/or user.

IX. Time Limitation

All of the purchaser's claims - for any legal reasons whatsoever - are subject to a time limitation of 12 months. This time limitation also shall apply to rights of recourse in the supply chain acc. to § 445 Section 1 BGB as far as at the last contract in this supply chain is not a consumer good purchase. The suspension of the limitation period § 445b Section 2 BGB remains unaffected. Statutory periods apply to damages claims under Section VII 2 a - d and f. They also apply to defects in a building and to supplied items which were used for a building in compliance with their customary purpose and caused the defect in the same.

X. Use of Software

If the scope of the order includes software, the purchaser will be granted a non-exclusive right to use the supplied software including its documentation. It will be provided for use on the supplied item intended for this purpose. Use of the software on more than one system is not permitted.

The purchaser may only use the software to the extent permitted by law (Sections 69 a ff. of the German Copyright Act (UrhG)). The purchaser undertakes not to remove manufacturer data - in particular copyright notices - or to alter it without the express prior consent of the supplier.

All the other rights to the software and documentation including copies will remain with the purchaser or, respectively, software supplier. No granting of sub-licences is permitted.

XI. Security Obligation and Purchaser's Compensation Obligation

1. Before passage of risk (Section IV), the purchaser must take appropriate security measures to protect from damage, deterioration and loss any construction materials and equipment delivered by the supplier after giving prior notification.

2. If the appliances or tools provided by the supplier are damaged at the erection site through no fault of the supplier or if they are lost through no fault of the same, the purchaser shall have an obligation to compensate this damage. Damage due to normal wear and tear is not included.

XII. Applicable Law, Legal Venue

1. The United Nations Convention on Contracts for the International Sale of Goods shall apply to all legal relations between the supplier and the purchaser.

2. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

3. The language of the case should be German or English.