

General terms and conditions of business of GENESIS GmbH

§1 General provisions and area of applicability

(1) Our deliveries and services take place exclusively in accordance with the provisions below and the contractual agreements.

Deviating general terms and conditions of business of our contracting partner are hereby being rejected and shall not become part of the contracts.

This also applies if Genesis performs the contract with the contracting partner without reservation in knowledge of the terms and conditions of the latter. The contrary only applies if Genesis expressly agrees to the general terms and conditions of business of the contracting partner in writing.

(2) These terms and conditions of business apply in particular to contracts relating to the sale and/or delivery of moveable objects (hereinafter also referred to as "goods") regardless of whether Genesis manufactures the goods itself or purchases these (in part) from suppliers - §§433, 650 of the German Civil Code, BGB. In their respective form as a framework agreement, these also apply to future contracts concerning the sale and/or delivery of moveable objects with the same contracting partner, without Genesis being required to refer to these once again in each individual case.

(3) Individual agreements which are concluded with the contracting partner in individual cases which conflict with the provisions of these general terms and conditions of business (including ancillary agreements, supplements and alterations) shall take priority over the respective provision of these general terms and conditions of business, provided that these took place in writing (text form).

(4) Legally binding declarations and notifications which must be made to us by our contracting partner following conclusion of the contract (for example the setting of deadlines, defect notifications, declaration of rescission or reduction) require text form in order to be effective.

(5) References to the applicability of statutory regulations are only of an informative nature. Therefore without such clarification, the statutory regulations shall apply, unless directly amended or expressly excluded in these general terms and conditions of business.

(6) Until the time of conclusion of the contract, our contractual offers are subject to confirmation and non-binding. This also applies if Genesis has provided the (potential) contracting partner with catalogues, technical documentation (for example drawings, plans, calculations, references to DIN norms), other product descriptions or documents etc, also in electronic form.

(7) Should a contract be concluded for the international sale of goods, Incoterms 2010 also apply to the interpretation of the commercial clauses.

§2 Delivery deadline and delivery delay, reservation of self-supply

(1) The delivery deadline for the goods will either be agreed individually with the contracting partner (binding delivery date) or will be stated by Genesis at the time of conclusion of the contract or following conclusion of the contract (non-binding delivery date).

(2) Should binding delivery deadlines not be complied with for reasons for which Genesis is not responsible, Genesis will immediately inform the contracting partner of such and provide notification of the expected new delivery date. Should the goods also not be available or impossible to deliver within the new delivery time or should the delivery be considered unreasonable, Genesis can rescind the contract by means of a declaration to the contracting partner. In such a case, any consideration provided by the contracting partner must be refunded immediately. As a rule, any right of rescission to which the contracting partner or Genesis is entitled in accordance with the above, under the contract or under statutory provisions only extends to the part of the contract which has not yet been performed. Should partial deliveries which have been provided not be usable by the contracting partner at all, it shall be entitled to rescind the whole contract. The rights of rescission and termination of the contracting partner in accordance with § 6 of these provisions shall remain unaffected.

(3) A case of non-availability of the service in accordance with § 2 Paragraph 1 of the general terms and conditions of business is present in the following cases: (a) non-timely self-supply by a supplier, (b) conclusion of a congruent hedging transaction by Genesis and the supplier does not provide delivery on time or (c) Genesis is not obliged to carry out the procurement in an individual case.

(4) In cases where the contracting partner does not fulfil contractual obligations on time, including mere co-operation or ancillary obligations, in particular concerning the opening of a letter of credit, provision of German or foreign certifications, provision of an advance payment, checking of drawings or samples or similar, Genesis reserves the right to reasonably postpone and adjust the delivery times according to the requirements of our production cycles.

Additional statutory or contractual claims of Genesis which relate to the non-fulfilment by the contracting partner in accordance with § 2 IV Sentence 1 of these general terms and conditions of business shall expressly remain unaffected.

(5) Otherwise, the time of occurrence and the consequences of the delivery delay shall be determined in accordance with the statutory regulations.

However in all cases, a warning with the setting of a reasonable period of grace by the contracting partner is required. The provisions of § 2 Paragraph 5 of these general terms and conditions of business apply to both binding and non-binding delivery dates.

§3 Delivery/place of performance, transfer of risk, acceptance, acceptance default

(1) The delivery takes place from our warehouse, which is also the place of performance.

Following a request by the contracting partner and at its expense, the goods will be sent to a different location (shipping purchase). Unless otherwise agreed, Genesis shall be entitled to determine the type of shipment itself, in particular the transportation company, delivery route and packaging.

(2) In case of shipping purchases, the risk of possible destruction or deterioration of the goods, as well as the risk of delay concerning compliance with delivery dates shall be transferred at the time of delivery or handover of the goods to the delivery or shipping company or other persons or companies involved in the delivery of the consignment. In other cases, the risk of possible destruction or deterioration of the goods shall be transferred at the time of handover to the contracting partner. Should acceptance be agreed, this shall be decisive in relation to the transfer of risk. Otherwise, the statutory regulations shall apply to any agreed acceptance. The handover or acceptance shall be considered equivalent where the contracting partner is in acceptance default.

(3) Should the contracting partner enter acceptance default, the risk shall be transferred to it at the time when acceptance default commences. In addition, in case of acceptance default or should the contracting partner fail to comply with its co-operation obligations or should our delivery be delayed for reasons for which the contracting partner is responsible, we are entitled to demand compensation for the loss incurred by us, including additional expenses (for example storage costs). Reference is also hereby being made to § 4 Paragraph 2 of these general terms and conditions of business.

(4) Unless otherwise agreed, the goods will be delivered without packaging and will not be protected against rust. Should packaging be agreed, packaging materials and delivery pallets will be charged for in accordance with prices which are customary in the trade and cannot be returned to us.

§4 Prices and payment terms

(1) Unless otherwise agreed, our prices apply ex-works and are subject to the respectively applicable statutory value added tax.

(2) In case of a shipping purchase (see § 3 (1) of these general terms and conditions of business), the contracting partner shall bear the transportation costs from our warehouse and the costs of any transportation insurance which it requests. Any customs charges, fees, taxes and other public duties shall be borne by the contracting partner.

Genesis will not retake possession of transportation packaging or any other packaging materials in accordance with the German Packaging Ordinance; these shall become the property of the contracting partner. Euro pallets are excluded from this provision.

(3) Unless otherwise agreed, payments must be made immediately, however at the latest within 14 calendar days of receipt of the invoice and without any deduction. Discounts must be agreed separately and will only be granted in exceptional cases and only if the contracting partner has not entered default in relation to the payment of other invoices.

(4) The contracting partner will enter default if it has not paid the invoice sum within 14 calendar days following receipt of the invoice. Thereby the time when the invoice sum is credited to the bank account of Genesis is decisive.

During the period of default, the invoice sum shall accrue interest at the respective statutory default interest rate.

In case of default, Genesis reserves the right to claim additional compensation. In relation to merchants, the claim of Genesis to commercial maturity interest (§ 353 of the German Commercial Code, HGB) shall remain unaffected.

(5) The contracting partner shall only have rights of set off and retention if its claim has been recognised by a court or is undisputed or if the counterclaim originates from the same contractual relationship. Should the delivery demonstrate defects, the rights of the contracting partner under §6 (5) of these provisions shall remain unaffected.

(6) Should it become apparent after conclusion of the contract that the claim of Genesis to the invoice sum is being endangered due to incapacity of the contracting partner to provide consideration (for example due to an application for the opening of insolvency proceedings), in accordance with the statutory regulations, Genesis shall be entitled to refuse to provide performance and, if applicable, it may rescind the contract following the setting of a deadline (§ 321 of the German Civil Code, BGB). In case of contracts for the manufacture of specific items (making to specification), Genesis can declare the rescission immediately; the statutory regulations concerning the lack of necessity of the setting of deadlines shall remain unaffected.

§ 5 Reservation of ownership

(1) Until full payment of all current and future claims under the sales agreement and an ongoing business relationship (secured claims), Genesis reserves ownership in relation to the goods which have been sold.

(2) The said goods which are subject to reservation of ownership may not be pledged to third parties or provided as security until full payment of the secured claims has taken place. The contracting partner must immediately notify Genesis in writing if any third party action takes place against the goods which belong to Genesis.

(3) In case of behaviour on the part of the contracting partner which is in breach of contract, in particular in case of non-payment of the purchase price which is due, Genesis is entitled, in accordance with the statutory regulations, to rescind the contract and/or demand return of the goods which are subject to reservation of ownership. Should the contracting partner fail to pay the purchase price which is due, Genesis is entitled to assert the said rights, should Genesis have set the contracting partner a reasonable deadline to make payment first without success or should such a setting of a deadline not be required in accordance with the statutory regulations.

(4) The contracting partner is entitled to sell on and/or process and/or alter the goods which are subject to reservation of ownership in the course of ordinary business dealings. In such a case, the following provisions shall apply additionally:

(a) The reservation of ownership extends to the products which are created by the processing, mixing or connection with the goods of Genesis to their full value, whereby Genesis shall be deemed to be the manufacturer. Should the reservation of ownership of third parties continue to apply in case of processing, mixing or connection with their goods, Genesis shall acquire co-ownership to the relationship of the invoice sums to the processed, mixed or connected goods. Otherwise, the same shall apply to the product which is created that applies to the goods which are delivered under reservation of ownership.

(b) The contracting partner hereby now transfers to Genesis the claims against third parties which are accrued from reselling the goods or product in full and/or to the amount of any co-ownership share on our part as security in accordance with the paragraph above. Genesis hereby accepts the assignment. The obligations of the contracting partner named in Paragraph 2 also apply in relation to the assigned claims.

(c) The contracting partner shall remain authorised to collect the claim alongside Genesis. Genesis shall be obliged not to collect the claim, provided that the contracting partner complies with its payment obligations in relation to Genesis, does not enter payment default, no application has been filed for the opening of insolvency proceedings and no other reason to prevent the contracting partner from providing performance is present. However, should this be the case, Genesis can request that the contracting partner notifies Genesis of the assigned claims and that their debtors provide all necessary information in order to collect the claims, hand over the relevant documents and notify the debtors (third parties) of the assignment.

(d) Should the realisable value of the securities exceed the claims of Genesis by more than 10 percent, then following a request by the contracting partner, Genesis will release securities of its choice.

§ 6 Defect claims of the contracting partner

(1) Unless otherwise stated below or in the agreed warranty terms, the statutory regulations shall apply in relation to the rights of the contracting partner in case of material defects and defects of title (including incorrect and reduced deliveries, as well as incorrect assembly or defective assembly instructions). In all cases, the special statutory regulations in case of an end delivery to a consumer shall remain unaffected (supplier recourse in accordance with §§ 445 a, 445 b of the German Civil Code - BGB).

(2) The basis of liability for defects is primarily the agreement which has been concluded relating to the quality of the goods. Should quality not have been agreed, an assessment must be carried out in accordance with the statutory provisions as to whether a defect is present or not (§§ 434 Paragraph 1 Sentences 2 and 3 of the German Civil Code - BGB). However, Genesis cannot assume any liability for public statements of the manufacturer and other third parties (for example advertisements).

(3) The defect claims of the contracting partner are subject to it having complied with its statutory inspection and complaint obligations (§ 377 of the German Commercial Code - HGB). Should a defect become apparent during the inspection or subsequently, Genesis must be informed of such in writing immediately. The notification is deemed to be immediate if this takes place within one week, whereby the timely sending of the notification suffices in order to comply with the deadline. Should the contracting partner fail to carry out the proper inspection and/or provide the defect notification, liability on the part of Genesis for the defect which has not been notified shall be excluded.

4) Should the delivered item be defective, GENESIS shall have the choice of either correcting the defect (improvement) or delivering a defect-free item (replacement delivery)

(5) Genesis is entitled to make the supplementary performance which is owed contingent on the contracting partner paying the purchase price which is due. However, the contracting partner is entitled to retain a part of the purchase price which is reasonable when considering the defect.

(6) The contracting partner must provide Genesis with the necessary time and opportunity to carry out the supplementary performance which is owed. In particular, it must hand over the goods which are being objected to for inspection purposes. In case of a replacement delivery, the contracting partner must, as a rule, return the defective item to Genesis in accordance with the statutory regulations.

Otherwise, the following applies:

Should Genesis send a corresponding replacement part to the contracting partner, this shall take place at the expense of the contracting partner.

The contracting partner must return the damaged part to Genesis.

In case of a warranty claim, the contracting partner shall then receive a credit note to the sum of the invoice which has been paid for the replacement part sent by Genesis.

The shipping costs shall be paid by the contracting partner.

In individual cases, Genesis will request the contracting partner to return the damaged / defective part prior to sending the replacement part.

(7) The necessary expenses for the purpose of inspection and supplementary performance, in particular transport, delivery, work and material costs shall be borne by Genesis, provided that a defect is actually present and in accordance with the provisions in the agreed warranty terms. However, should a defect correction request of the contracting partner be shown to be unjustified, Genesis can request that the contracting partner reimburses the costs which are incurred as a result.

(8) In urgent cases, for example in case of endangerment of operational security or to defend against disproportionate loss or damage, the contracting partner has the right to correct the defect itself and request reimbursement by Genesis of the objectively necessary expenses in this respect.

Should the contracting partner correct the defect itself, Genesis must be informed immediately, where possible in advance. The right of the contracting partner to correct the defect itself does not apply if Genesis would be entitled to refuse corresponding supplementary performance in accordance with the statutory regulations.

(9) Should the supplementary performance have failed or should a reasonable deadline for supplementary performance to be set by the contracting partner have expired fruitlessly or should this not be required in accordance with the statutory regulations, the contracting partner can rescind the sales agreement or reduce the purchase price. However, no right of rescission exists in the case of minor defects.

(10) Damages claims of the contracting partner or claims to the reimbursement of fruitless expenses only apply in accordance with § 7 and are otherwise excluded.

§ 7 Other liability

(1) Unless otherwise stated in these provisions, including those below, Genesis shall incur liability in accordance with the applicable legal regulations in case of a breach of contractual and non-contractual obligations.

(2) Regardless of legal reason, Genesis will only incur liability to pay damages in case of intent and gross negligence. In case of simple negligence, Genesis will only incur liability as follows:

(a) for losses connected to injury to life, body or health and

(b) for losses connected to a breach of an essential contractual obligation (an obligation whose fulfilment is necessary for the proper performance of the contract and on whose compliance the contracting partner regularly relies and may rely); however, in such a case, the liability of Genesis shall be limited to the reimbursement of losses which are foreseeable and occur typically.

(3) The liability restrictions under Paragraph 2 do not apply should Genesis have fraudulently concealed a defect or should it have assumed a guarantee concerning the quality of the goods. The same applies to claims of the contracting partner under the German Product Liability Act (Produkthaftungsgesetz).

(4) The contracting partner can only rescind or terminate the contract due to a breach which does not represent a defect if Genesis is responsible for the breach of obligation. A free right of termination on the part of the contracting partner (in particular in accordance with §§ 649, 648 of the German Civil Code - BGB) is excluded. The right of termination for important reasons under §§ 648 a of the German Civil Code (BGB) shall remain unaffected by the above. Otherwise, the statutory requirements and legal consequences shall apply.

§ 8 Limitation period

(1) In deviation from the statutory provisions, the warranty period for hydraulics is 12 months. Otherwise, the warranty period is 18 months. In case of second hand goods, any warranty shall be excluded, unless this concerns a consumer goods purchase. The special statutory regulations relating to in rem third-party restitution claims (§ 438 Paragraph 1 No.1 BGB), in case of fraud on the part of the seller (§ 438 Paragraph 3 BGB) and supplier recourse claims in case of final delivery to a consumer (§ 445 b BGB) shall remain unaffected. Furthermore, claims due to injury to life, body or health and/or damages claims due to losses which are caused by Genesis intentionally or gross negligently also remain unaffected.

In addition, the provisions of the agreed warranty terms apply, in particular the regulation in C.

(2) The limitation periods under sales laws above also apply to contractual and non-contractual damages claims of the contracting partner which relate to a defect in relation to the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. In all cases, the limitation periods of the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected. Otherwise the statutory limitation periods shall apply exclusively to damages claims of the contracting partner in accordance with § 7.

§ 9 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these terms and all legal relationships between Genesis and the contracting partner, to the exclusion of all international and supranational (contractual) legal ordinances, in particular the United Nations Convention governing the International Sale of Goods. However the requirements for and effects of the reservation of ownership in accordance with § 5 shall be subject to the law at the respective storage location of the object, should the choice of law in favour of German law be unlawful or ineffective.

(2) Should the contracting partner be a merchant in accordance with the German Commercial Code (HGB), a legal person under public law or a public law special fund, the exclusive place of jurisdiction (also internationally) for all disputes arising under the contractual relationship directly or indirectly shall be our place of business in Memmingen, Germany. However, Genesis is also entitled to bring a lawsuit at the general place of jurisdiction of the contracting partner.

Memmingen, 12.06.2019