

SwissT.net - Delivery Conditions for Equipment & Systems

1. Applicability

The swissT.net delivery conditions apply if both parties recognise them either explicitly or tacitly. Any changes made shall only be effective if they are confirmed in writing by the supplier.

2. Means of communication

The parties communicate with each other orally, in writing or by means of electronic data exchange.

Letters, reports, drawings, plans, telefax messages, e-mails and other forms of conveying information that enable verification by means of texts or images are regarded as written means of communication. Signed means of communication refer to documents etc. that must be signed personally or must bear an appropriately qualified electronic signature.

3. Scope of performance

The order confirmation or, failing such, the offer made by the supplier shall be binding in respect of the scope and/or execution of the products and/or services. Services and/or products such as documentation, programs, programming, customising, installation, commissioning, training and application support are not part of the scope of performance unless they have been promised explicitly in the order confirmation or offer.

4. Place of fulfilment and delivery

Unless a special place of fulfilment/delivery has been agreed on or is determined by the nature of the business transaction, the supplier is allowed to provide the products and services at the place where the supplier's own offices/business facilities are located.

If the supplier delivers the products to another location, the customer shall bear the risks and costs of transport as well as the costs incurred due to packaging and customs clearance, even if the supplier organises such transport.

If the supplier performs services at another location, the customer shall reimburse the costs of travel and accommodation.

5. The customer's obligation to inform

The customer must draw the attention of the supplier to any special technical requirements as well as to legal and other regulations/regulations imposed by governmental authorities at the named destination, in so far as they are significant.

6. Documentation

If the documentation is not included in the scope of performance, the customer can purchase it in its usual form for a set price. If the customer wants special forms of documentation or in languages other than the original language of the documentation, this must be agreed on separately.

Differences in the documentation, i.e. between descriptions and illustrations, are permissible in so far as the documents fulfil their purpose.

7. Software and know-how

The customer is allowed to use the supplied software, the results of work, the know-how, the data carriers and documents according to the terms of an existing licence. If the customer does not possess such a licence and if the scope of the rights of use cannot be derived from the purpose of transfer, the customer and his clients/end users shall only possess the right to use the corresponding products but not the right to independently sell, distribute, duplicate, expand or alter them.

The supplier or his licensor retains ownership of and the right to use the products even if the customer subsequently changes the computer program(s), the results of work or the know-how records.

The customer shall take the necessary measures to protect computer programs, results of work and documentation against undesired access or misuse by unauthorised parties.

The customer is allowed to make the necessary back-up copies. He must mark these accordingly and keep them separately and securely.

8. Use

The customer shall be responsible for use of the products and services as well as for combining them with other products, namely with information technology systems or electrical devices and equipment. At the same time, the customer shall exercise due diligence and care and must observe all the instructions of the manufacturer and supplier.

The customer is obliged to pass on all information that is relevant to safety and security to the end users in a suitable form.

9. Disposal

The customer shall dispose of the supplied products at his own expense after use or shall transfer to his clients/end users the obligation to dispose of them.

The customer exempts the supplier from all obligations to dispose of the products, namely from any obligation to take back products, from the costs of disposal and from any corresponding claims made by third parties.

This transferred obligation and the obligation to exempt the supplier do not lapse until two years after cessation of use of the products.

10. Delivery dates

Only delivery dates affirmed in writing are binding. Delivery on such dates will be postponed

- a) if information that the supplier needs for execution are not received by the supplier in good time or if the customer subsequently alters such information
- b) if the customer is behind schedule in the performance of the work that he has to do or in fulfilment of his contractual obligations, especially if he does not comply with the terms of payment
- c) if problems arise that are beyond the control of the supplier such as natural events, mobilisation of the armed forces, war, insurgence, epidemics, accidents and illness, substantial operating impairments, labour conflicts, delayed or defective deliveries or measures imposed by governmental authorities.

The supplier is entitled to make part-deliveries.

In the event of delays, the customer shall grant the supplier an appropriate amount of extra time for the performance of any outstanding work or services. If this extra time period is exceeded and if any further delay is unacceptable for the customer, the latter shall be entitled to declare the contract null and void as long as he notifies the supplier of this within three days after expiry of the extra time period.

If the supplier is verifiably to blame for the delay, the customer shall be entitled to compensation for any actual losses in spite of subsequent fulfilment or nullification of the contract. Compensation shall be limited to one per cent per week, the maximum being ten per cent, of the value of the delayed delivery. All other claims due to delivery delays are excluded.

11. Acceptance inspection

Unless a special acceptance-inspection procedure has been agreed on, the customer shall inspect all products and services himself.

Immediately after receipt, the customer shall inspect the supplied products with regard to identity, quantity, transport damage and accompanying papers. The customer shall

also inspect the products and services for any further defects and flaws as soon as possible.

The customer must report any defects immediately in writing. Products and services are regarded as having been accepted if they are used commercially for more than twenty working days.

Hidden defects that it would not have been possible to discover during a properly conducted inspection, are to be reported in writing immediately after their discovery.

12. Defects

The supplier shall endeavour to exercise the necessary due diligence and care and to ensure that his products and services possess the assured properties. Moreover, the supplier shall be liable for their suitability to the extent that the customer informed him of their use in writing before the contract was signed.

The supplier provides no guarantees for the results that the customer wishes to achieve with the products and services.

Faults and flaws for which the supplier is not responsible such as natural wear, force majeure, improper handling, manipulation by the customer or third parties, excess wear and tear, unsuitable equipment, problems caused by other machines and systems, an unstable power supply and especially climatic conditions or unusual outside influences are excluded from the liability for defects.

The customer shall not be entitled to make claims due to a negligible defect. Defects are negligible if they do not impair the use of products and services.

In the event of substantial defects, the customer shall grant the supplier an appropriate extra amount of time for their rectification (correction or supply of a replacement). The supplier shall rectify the defects on his own premises or, if he so wishes, on the premises of the customer, who must grant him free access for this purpose. The costs of removal and installation, transport, packaging, travel and accommodation shall be borne by the customer. Replaced parts will be the property of the supplier.

The warranty period and the period of limitation of liability are each twelve months. Recognition or elimination of a defect does not mean that these periods are interrupted.

If the attempt to rectify the defect(s) is unsuccessful, the customer shall be entitled to a suitable price reduction. He is only entitled to declare the contract null and void if acceptance of the products or services would be unreasonable.

If the supplier is verifiably to blame for the defect, the customer shall be entitled to compensation for the actual damage in spite of rectification of the defect, price reduction or nullification of the contract. However, such compensation shall be limited to a maximum of twenty per cent of the value of the defective delivery. The replacement of lost profit and other asset losses are completely excluded.

13. Additional liability

Within the framework of his third-party liability insurance, the supplier shall be liable for any additional material damages and personal injury that is suffered by the customer and for which the supplier is verifiably responsible. Any further claims, namely for the behaviour of vicarious agents, are excluded.

14. Prices and terms of payment

Unless indicated otherwise, the prices are in Swiss francs excluding value added tax, levies, customs duty, transport, packaging, insurance, licences, certificates, installation, commissioning and application support. Payment is due net within thirty days after the invoice date.

The customer shall be entitled to set off counter-claims against payment of invoices only if the supplier has given his signed written consent to do so.

If the customer fails to adhere to the specified payment deadline, he shall pay eight per cent annual interest on arrears without any reminder of the due date of payment.

In the event of a delay in payment, the supplier is entitled to

- a) declare that all payments arising from the business relationship with the customer are due immediately, even if such payments do not arise from the same legal relationship
- b) set an appropriate period for the settlement of all due payments and, if the customer does not pay the total due amount within this period, declare cancellation of the contract and demand return of

the supplied products and services

- c) to make further performance of services/supply of products (incl. the rectification of defects) dependent on suitable security to be provided by the customer, including advance payment, even if these services/products do not originate from the same legal relationship.

15. Discretion

Neither of the two parties shall disclose any information relating to the business practices of the other to third parties, irrespective of whether such information is generally accessible or widely available. They must take all necessary precautions to prevent third parties gaining access to this information. On the other hand, each party is entitled to use knowledge gained in the course of their own business activities.

The parties shall impose this obligation to maintain secrecy on their employees, staff and representatives as well.

16. Export

The customer is responsible for compliance with all relevant domestic and foreign export regulations.

17. Choice of law and jurisdiction

This legal relationship is subject to Swiss law.

The place of jurisdiction is the place of business of the supplier. The supplier shall also be entitled to seek legal redress in the place of business of the customer.

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