

Terms and conditions of sale, delivery and payment for the Building Technology business division

GIRA

Scope, definitions

Scope:

These Terms and Conditions of Sale, Delivery and Payment apply only to entrepreneurs, legal persons under public law or special funds under public law under the terms of Section 310 para. 1 of the German Civil Code. Any terms of Customer running contrary to or diverging from these Conditions of Sale shall not be recognised unless they have been expressly agreed to by Gira in writing.

2. These Terms and Conditions of Sale, Delivery and Payment apply to all future transactions with Customer, provided that they are legal transactions of a related kind.

Definitions:

The terms 'Gira', 'Customer' and 'Entrepreneur' have the following meanings:

Gira is
Gira Giersiepen GmbH & Co KG,
Dahlenstrasse,
42477 Radevormwald

Customer is any entrepreneur that Gira enters into a contract with in accordance with Section 2 of these General Terms and Conditions.

Entrepreneur is any natural or legal person or partnership with legal capacity which is exercising its trade or profession when entering into a transaction with Gira.

1. General provisions

1. Gira reserves without limitation its rights of ownership and exploitation of copyright in respect of cost estimates, drawings and other documents. The documents may be made available to third parties only with Gira's prior written consent. If the order is not placed, they must be returned to Gira upon request without undue delay. Sentences 1 and 2 apply mutatis mutandis to Customers' documents. However, these may be made available to any third parties that Gira has commissioned, to the extent permitted, to deliver the products and services.

2. Partial deliveries are permitted if they are acceptable to Customer.

2. Offer and conclusion of the contract

If a purchase order can be regarded as an offer under the terms of Section 145 of the German Civil Code, Gira can accept this within two weeks.

3. Scope of the deliveries and services

The documents, drawings, information about weights, samples etc. enclosed with Gira's offer are only approximate, unless otherwise stated in the offer. Gira expressly reserves the right to make changes to the design, layout, choice of materials and manufacturing process even after sending the order confirmation, provided that this does not affect the quality, price and/or material functional data or the delivery period and that this is acceptable to Customer.

4. Delivery periods

1. The delivery period specified by Gira is not binding, unless other agreements are reached with Customer. This is explicitly dependent on correct and punctual deliveries being made to Gira.

2. The delivery period will be extended if unforeseen, unusual and unavoidable events occur, including but not limited to strikes of any kind, embargoes and the failure of Gira's suppliers to deliver on schedule.

3. If the shipment of the goods is delayed at Customer's request or for other reasons, for which Gira is not responsible, Customer will pay the resulting additional costs and will bear the risk of the goods being accidentally destroyed or damaged after notification of readiness for delivery.

4. If the product is stored in the Gira factory (or on the premises of Gira's authorised representatives), Gira is entitled to charge at least 0.5% of the price of the delivery for every month or part of a month of storage. Gira reserves the right to make other claims, in particular under the terms of Section 373 of the German Commercial Code.

5. Gira reserves the right to make partial and early deliveries.

6. In the event of a delay in delivery, for which Gira is responsible, Customer is obliged to grant Gira in writing an appropriate extension period. If, in the event of a delay in delivery, Customer grants Gira an extension period that is reasonable in the circumstances and if Gira misses the new deadline due to reasons, for which Gira is responsible, Customer is entitled to withdraw from the contract. Customer may only claim compensation if any losses or damage suffered were caused intentionally or as a result of gross negligence.

7. If the contract is a fixed-date transaction under the terms of Section 376 of the German Commercial Code, the previous paragraph applies, with the proviso that Customer can withdraw in writing from the contract to the exclusion of all further rights, unless the losses or damage suffered were caused intentionally or as a result of gross negligence.

8. In order for Gira to meet the delivery deadline, Customer must fulfil its contractual obligations and, in particular, its payment obligations properly and on schedule.

5. Transfer of risk, shipment

1. The Incoterms rules, as amended, currently Incoterms 2010, "EXW" (ex works) clause, applies to the relationship between Gira and Customer. The risk of the goods being accidentally destroyed or damaged is transferred to Customer when the goods are shipped to Customer and, at the latest, when they leave the factory/warehouse. This applies regardless of whether or not the goods are shipped from the place of fulfilment and regardless of who is responsible for the shipping costs.

2. If Gira takes responsibility for the transport insurance as part of its general insurance policy, the terms and conditions of the insurance apply and the following documents must be provided by Customer:

- Factual report from the transport company (for example the receipt from the haulage firm)
- Original copy of the consignment note
- Transfer of rights for the damage caused.

3. If Gira is responsible for the transport damage, Customer must inform Gira in writing immediately after receiving the shipment that transport damage has occurred. The damaged parts must be sent back to the factory in Radevormwald or to the relevant Gira warehouse free of charge. Customer may not refuse to accept deliveries because of minor defects.

6. Prices, payment terms, securities

1. Gira's prices are quoted ex works or from the relevant warehouse and exclude the cost of packaging and VAT at the current rate. The cost of the packaging will be invoiced separately.

2. Unless a fixed price agreement has been reached with Customer, Gira reserves the right to make appropriate adjustments to the prices as a result of changes in the cost of salaries, materials and sales for deliveries that are made three months or more after the contract is concluded.

3. A flat-rate processing fee of GBP 14.00 will be charged for orders with a value of less than GBP 90.00. For third-party deliveries (where the shipping address differs from the order address), Gira charges a flat-rate shipping charge of at least GBP 7.00 per shipment. Higher shipping charges will be agreed individually with Customer.

4. All Customer's payments must be made to Gira's bank account on the agreed dates.

5. If Customer's financial situation changes after the date on which Gira sends out the order confirmation and if this could call into question Customer's ability to fulfil its payment obligations, Gira is entitled to withhold delivery of the goods or to require Customer to provide security. If Customer does not comply with Gira's request for security within a reasonable period, Gira is entitled to withdraw from the contract.

6. If Customer pays within 10 days of the invoice date, Gira offers a discount of 2%. Gira does not offer a discount on the services that it provides. No discount will be given on payments that are in arrears. The standard payment terms are 30 days net. Gira's representatives and salespeople are not authorised to accept payments or means of payment, unless they have collection authority.

7. Customer is obliged to comply with Gira's request to pay within 30 days of receiving the goods. At the end of this period Customer is considered to be in default, without a further reminder being necessary. While Customer is in default, it must pay interest of 9% above the base rate on the amount it owes. Gira reserves the right to provide proof that greater damage has been caused by Customer's default and to make a claim for damages.

8. If Gira has taken responsibility for setting up and assembling the goods, unless otherwise agreed, Customer will pay all the necessary incidental costs such as travel costs, costs of transporting the employee's tools and luggage and the accommodation allowance, in addition to the agreed payment for the work.

7. Offsetting payments and rights of retention

Customer is entitled to offset payments to Gira only if its counterclaims are res judicata or are undisputed. Customer is entitled to exercise a right of retention with regard to Gira only if its counterclaim is based on the same contractual relationship.

8. Defects

Gira's liability for defects is as follows:

1. All the parts or services that prove to have a defect within the period of limitations – regardless of the operating period – must at Gira's discretion be rectified or replaced with new parts or services, provided that the cause of the defect already existed at the time when the risk was transferred.

2. The period of limitations for claims for defects is 24 months. This does not apply if the law specifies longer periods under the terms of Section 438 para. 1 point 2 (buildings and items for buildings), Section 479 para. 1 (recourse claims) and Section 634a para. 1 point 2 (construction defects) of the German Civil Code. It also does not apply in the case of loss of life, injury or harm to health or of an intentional or grossly negligent breach of duty on the part of Gira or of malicious silence with regard to a defect. The statutory regulations concerning the suspension of limitations and the suspension and restarting of the periods remain unaffected.

3. Customer must inspect goods and services immediately after receiving them. Section 377 of the German Commercial Code applies. Customer must inform Gira of defects in writing, by email or by fax within a period of two weeks. The decisive factor is the date on which Gira receives the complaint. In the case of obvious defects, this period begins when the goods are delivered to Customer. In the case of hidden defects, it begins when the defects are identified by Customer. If Gira is not notified of the defect within the specified period, Customer cannot make any warranty claims. Customer bears the full burden of proof in respect of all claims, in particular with regard to the defect itself, the date on which it was identified, and the timeliness of the complaint.

4. In the case of complaints that are submitted in due time and form, Customer is entitled to withhold payments that are proportionate to the defects that have been identified. Customer can withhold payments only if a complaint has been made, whose justification is beyond doubt. If the complaint was made wrongly, Gira is entitled to require that Customer reimburse it for any expenses incurred.

5. First of all, Gira must be given a reasonable opportunity to rectify the problem within a reasonable period. Any parts that have been replaced must be sent back to Gira on request free of charge.

6. If the attempt to rectify the problem fails (under the terms of Section 440 of the German Civil Code), Customer can withdraw from the contract or reduce the payment amount, notwithstanding any claims for damages under the terms of Section 12.

7. Claims cannot be made for defects if there is only a minor deviation from the product's agreed level of quality or a minor impairment of the usability of the product or if there is natural wear or damage which occurred after the transfer of risks as a result of incorrect or negligent handling, excessive loads, unsuitable operating resources, faulty construction work, an unsuitable building area or external influences which are not implied in the contract or if there are unreproducible software errors. If Customer or a third party makes improper changes or carries out improper repairs, Customer is not entitled to make a claim for defects for these problems or the resulting consequences. Gira's warranty terms require the product to be fitted correctly and to be started up and used precisely in accordance with the operating instructions.

8. Customer cannot make any claims for the necessary expenses incurred for the purpose of rectifying the problem and in particular the cost of transport, travel, labour and material, if the expenses have increased because the object of delivery was subsequently taken to a location other than Customer's site, unless taking it to the other location corresponds with its intended use.

9. Customer may make recourse claims against Gira under the terms of Section 478 of the German Civil Code (recourse of the entrepreneur) only if Customer has not reached any agreements with its own customer that go beyond the statutory claims for defects. With regard to the scope of Customer's recourse claim against Gira under the terms of Section 478 para 2 of the German Civil Code, No. 8 paras 7 and 8 additionally apply mutatis mutandis.

10. With regard to claims for damages, Section 12 (Other claims for damages) of these Terms and Conditions of Sale, Delivery and Payment otherwise applies. Customer cannot make further claims or claims other than those described in this Section 8 against Gira and its agents because of a defect.

9. Returns processing (Return of goods)

1. If Customer's warranty claim is not valid, Gira is not obliged to take the goods back.

2. If Gira makes an exception and agrees to take back Customer's goods without a warranty claim being made, this constitutes a voluntary measure and does not involve the recognition of legal obligations. This does not justify Customer making a claim for the refund of the purchase price.

3. If Gira processes a return without a warranty claim being made as described in para 2 above, Customer will be charged a flat-rate processing fee. The current amount of the fee can be found on Gira's website at <http://www.gira.de/service> and <http://www.gira.de/service/fgh/retouren.html>.

10. Retention of ownership

1. Gira retains ownership of the goods until all the payments have been received from all the contracts that have been entered into up to the time of the signing of the final contract between Customer and Gira. Customer can resell the goods that are subject to retention of ownership as part of its normal business. However, Customer will assign to Gira all claims for the amount of the relevant invoice value that Customer has incurred as a result of the resale of the goods to its own customer or to third parties. Customer is entitled to collect the claims even after they have been assigned. This does not affect Gira's authorisation to collect the claims itself. In particular, Gira can require Customer to inform Gira about the assigned claim, its level and its debtors, to provide all the information needed for the purposes of collection, to submit the accompanying documents to Gira immediately and to inform the debtor of the assignment of the claim in writing.

2. Customer is not entitled to pledge the goods that are subject to retention of ownership or to transfer ownership of them to third parties in order to provide security.

3. If Customer breaches the terms of the contract, specifically by falling into payment arrears, Gira is entitled to take back the goods. If Gira takes back or pledges the goods, this does not constitute a withdrawal from the contract on Gira's part. If Gira wishes to withdraw from the contract, it will inform Customer of this expressly in writing. Customer must inform Gira immediately in writing of any pledges or other interventions by third parties.

4. If Customer processes or modifies the purchased item, this is always done in the name of and on behalf of Gira. In this case Customer retains its expectant right to the purchased item in relation to the unmodified item. If the purchased item is processed with other items not belonging to Gira, Gira will acquire co-ownership of the new item in the proportion of the objective value of the purchased item to the value of the other items at the time when they are processed. This also applies to the mixing of items. If the items are mixed in such a way that Customer's product can be regarded as the main product, it is agreed that Customer will transfer proportional co-ownership to Gira and will safeguard Gira's resulting sole ownership or co-ownership. In order to provide security for Gira's claim against Customer, Customer will also assign to Gira claims against a third party that result from combining the goods under retention of title with a piece of land. Gira hereby agrees to accept this assignment.

5. Gira will release Customer's security on request at Gira's discretion and to the extent that the value of the security exceeds the value of the claims being secured by more than 25%.

11. Impossibility of delivery

If it is impossible to deliver the goods or services, Customer is entitled to claim damages, unless Gira is not responsible for the impossibility of delivering the goods. However, Customer's claim for damages is restricted to 10% of the value of that part of the delivery that cannot be put into operation because of the impossibility of delivery. This restriction does not apply if mandatory liability is applicable in cases of intent, gross negligence or due to loss of life, injury or harm to health. This does not involve a change in the burden of proof to Customer's disadvantage. Customer's right to withdraw from the contract remains unaffected.

12. Other claims for damages

1. Customer cannot make claims for damages and expenses (referred to in the following as claims for damages) for whatever legal reason and, in particular, due to a breach of contractual obligations or due to unlawful acts. This does not apply if mandatory liability is applicable, for example under the terms of the German Product Liability Act, in cases of intent, gross negligence, loss of life, injury or harm to health or as a result of the breach of material contractual obligations. However, a claim for damages for the breach of material contractual obligations is restricted to foreseeable damages that are typical for this type of contract, provided that there is no intent or gross negligence involved and that there is no liability for loss of life, injury or harm to health.

2. For the rest, the basis and extent of claims for damages is restricted to the amount of insurance available to Gira at the time the damage occurred.

3. If Customer is entitled to make claims for damages under the terms of this Section 12, the statutory regulations concerning the period of limitations apply.

13. Place of fulfilment, place of jurisdiction, scope

1. The place of fulfilment for all obligations referred to in this contract, including a claim resulting from withdrawal, is Radevormwald, Germany.

2. The places of jurisdiction are the places where the courts with jurisdiction over Radevormwald are located. This also applies to legal proceedings concerning bills of exchange and cheques and, in particular to claims relating to the debt collection procedure. However, if legal proceedings against Gira are not pending, Gira is entitled to take proceedings against Customer in the court with jurisdiction over the town where Customer is based.

3. The law of the Federal Republic of Germany applies to all legal relationships relating to this contract. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.