

TASSTA GENERAL CONDITIONS FOR DELIVERIES AND SERVICES

Kilde/hentet fra: <https://tassta.com/general-conditions/>

- These General Terms and Conditions of Business (“these Terms”) shall govern the rights and obligations concerning the items (e.g. products, software, devices, overall systems; the “Deliveries”) and services (e.g. installation, assembly, configuration, repair; the “Services”) by TASSTA GmbH (“TASSTA”) to business customers, legal entities of public law or special funds under public law (the “Customer”). These Terms form part of the contract which is brought about through TASSTA order confirmation following the Customer’s order. In case of any conflicts between the provisions of the order confirmation and these Terms, the provisions of the order confirmation shall take precedence. Any deviating or supplementing contractual terms of the Customer shall be excluded and shall not apply even if TASSTA does not explicitly object to them.
- The regulations of the German Association for Electrical, Electronic and Information Technologies (Verband der Elektrotechnik, Elektronik, Informationstechnik, “VDE”) shall apply to all Deliveries and/or Services insofar as they are relevant to the safety of the Deliveries and/or Services and these Terms do not provide for any deviating regulations in this respect. Deviations from VDE regulations are permissible insofar as the same level of safety is achieved by other means.
- Documents, e.g. illustrations, drawings, weights, performance specifications in brochures, cost estimates, data sheets, etc., do not constitute any guarantees as per § 443 BGB (German Civil Code), but performance descriptions. TASSTA reserves the right to make any alterations due to and justified by technical advancements, even after confirmation of the order.
- Except with the express prior written consent of TASSTA, the Customer shall not be entitled to reproduce, copy, make available to third parties or otherwise disclose the documents mentioned in Section 1.3 above or to use them in any manner conflicting with TASSTA’s interests. If the order is not placed with

TASSTA, the documents shall be returned to TASSTA without undue delay upon request. The preceding sentences 1 and 2 shall apply correspondingly to the Customer's documents provided to TASSTA; the documents provided to TASSTA may, however, be made available to those third parties whom TASSTA has rightfully subcontracted to perform any Deliveries and/or Services.

PRICES

1. Prices for Deliveries (for Services see Section 8) are CIP according to INCOTERMS 2010, ICC Publication Section 715 ED, to the destination indicated in the offer or elsewhere, unless these Terms provide differently. Prices are unless otherwise stated, in Euro (€), plus applicable VAT/GST, as well as any other taxes, customs duties, charges, or other fees, possibly levied even according to the rules of a law other than the law applicable pursuant to Section 13.1. Customary packaging is included in the price; any costs arising for packing of equipment and installations and systems as well as special packaging requested by the Customer will be charged separately.
2. Prices reflect the cost situation for TASSTA at the time of conclusion of the contract. If any costs change before the day of delivery/performance of service, TASSTA reserves the right to adjust the prices provided that the Deliveries and/or Services are to be carried out as agreed more than four (4) months after the conclusion of the contract.

RESERVATION OF TITLE

3. Title to delivered items ("Retained Goods") is retained by TASSTA until all claims and receivables of TASSTA against the Customer under the business relation (including any current account receivables) are satisfied, insofar as this is permissible under the law of the country in whose territory the Retained Goods are located as agreed upon. If such law does not permit reservation of title to the Retained Goods, but permits reservation of similar rights, TASSTA shall be entitled to assert such rights. The Customer commits to support all measures taken in order to protect the title to or security interests in the Retained Goods.
4. Insofar as the title of TASSTA to the Retained Goods expires through combination with another item, TASSTA acquires co-ownership to the new item on a proportional basis, i.e. at the ratio the value of the combined Retained Goods (final invoice amount including VAT) bears to the value of the other combined items at the time of combination. If the Retained Goods are combined in such a manner that the items of the Customer are to be regarded as the main item, TASSTA and the Customer hereby agree that the Customer assigns proportionate co-ownership to such item to TASSTA. TASSTA hereby accepts such assignment. Any costs incurred by TASSTA in connection with the enforcement of its claims as co-owner shall be borne by the Customer.
5. Insofar as the value of all security interests to which TASSTA is entitled under this Section 3 exceeds the amount of all secured claims and receivables by more than ten percent (10 %), TASSTA will release a corresponding portion of the security interests in the Retained Goods at the Customer's request; however, TASSTA may select the Retained Goods to be released.

The Customer shall be entitled to resell the Retained Goods within the ordinary course of business. The Customer hereby assigns its claims under the resale of the Retained Goods to TASSTA. The assignment includes all ancillary rights and those claims of the Customer regarding the Retained Goods which arise on a different legal ground against its buyers or third parties (in particular, claims based on tort and claims to insurance benefits) as well as all current account receivables in the amount of the claims and receivables owing to TASSTA. TASSTA hereby accepts the assignment.

6. The Customer shall be entitled to collect the assigned claim as long as it satisfies its payment obligations vis-à-vis TASSTA. In case of the Customer's payment default, TASSTA shall be entitled to revoke this power of collection. The Customer may not assign such claims, however, in order to have them collected by way of factoring, unless the Customer obliges the factor irrevocably to affect the counter performance directly to TASSTA for as long as TASSTA still has receivables against the purchaser.
7. The Customer shall inform TASSTA without undue delay of any seizures, attachments or other dispositions or interventions by third parties. If the third party is unable to reimburse TASSTA for the court or out-of-court costs incurred by TASSTA in this connection, the Customer shall be liable therefore.
8. TASSTA shall have the right to withdraw from the contract and take back the delivery items if the Customer violates any obligations, especially in case of payment delay; the Customer shall be obliged to return the delivery items.
9. If the Deliveries and/or Services consist of software, the Customer shall not acquire title, but solely the rights specified in Section 9.

TERMS OF PAYMENT

10. All payments shall be made to TASSTA within thirty (30) calendar days from the invoice date without any deductions.
11. For orders amounting to a total value of more than €50,000 net, a down payment of thirty percent (30 %) plus proportionate VAT/GST shall be made upon placing of the order. TASSTA shall not be obliged to pay any interest on the down payment.
12. TASSTA reserves the right to demand securities for payment and/or advance payments.
13. The Customer may set off payments only against such claims, or assert a right of retention only with respect to claims that are uncontested or established with non-appealable effect. The Customer shall be entitled to assert a right of retention only on the ground of claims that derive from the same contract as the corresponding counterclaim of TASSTA.
14. If the Customer is in delay of payment, TASSTA reserves the right without waiving any other rights, to charge annual interest of eight (8) percentage points above the official base interest rate of the Deutsche Bundesbank.
15. All agreed price discounts on the prices shown in the contract and all agreed rebates of any kind whatsoever will cease to apply entirely if the Customer is fully or partially in default to TASSTA with its payment and acceptance obligations.
16. The place of payment shall be Germany.

PERIODS FOR DELIVERIES AND/OR SERVICES

17. Compliance by TASSTA with the periods for Deliveries and/or Services requires that all obligations of the Customer are fulfilled properly and in due time, in particular that all documents, approvals and releases to be furnished by the

Customer are received by TASSTA in time, that all plans are clarified and approved in time, that the items and services to be provided by the Customer according to Section 8. are available, and that such other obligations are satisfied which are required for the Deliveries and/or Services by TASSTA to be carried out properly and in due time. If such requirements are not satisfied in time, the periods shall be extended accordingly, plus a reasonable restart period. If a down payment according to Section 4.2 or a corresponding agreement between the contracting parties has to be made, the preceding sentence shall apply correspondingly.

18. If the obligations of TASSTA according to the applicable INCOTERMS are fulfilled, the periods will be deemed complied with.
19. If the Deliveries and/or Services are delayed for reasons attributable to the Customer's responsibility, the periods shall be deemed complied with upon notification of the readiness for dispatch and service within the agreed periods.
20. If non-compliance with the periods for Deliveries and/or Services is due to force majeure, e.g. mobilization, war, riot or similar events such as, but not limited to, strike, lockout or the occurrence of other unforeseen events, the periods will be extended accordingly, plus a reasonable restart period. The events of force majeure shall include any sovereign acts, such as, but not limited to, refusal of a required governmental approval in spite of an application having been properly filed, imposition of an embargo, transport restrictions and restrictions of energy consumption, but also general shortage of raw materials and common supplies as well as other reasons, such as nondelivery or late delivery by suppliers, beyond the control of TASSTA. If an event of force majeure lasts more than six (6) months, each party shall be entitled to withdraw from the contract.
21. If TASSTA is in delay exclusively by its own fault, the Customer may – if he can prove that it has suffered damage owing to the delay – demand, from the third full week, liquidated damages equal to zero point five percent (0.5 %) for each further full week of delay up to a total of five percent (5%) of the value of the delayed part of the Deliveries and/or Services.

22. Claims of the Customer for compensation of the default damage due to the delayed Delivery and/ or Service and any further claims for damages exceeding in total the limit of five percent (5 %) as provided in Section 5.5 shall be excluded in all cases of delayed delivery, even after expiry of any extension period granted to TASSTA.
23. The Customer may withdraw from the contract due to delay in accordance with the statutory provisions only if the default damage has reached the upper limit of five percent (5 %) specified in Section 5.5.
24. At the request of TASSTA, the Customer shall state within a reasonable period whether he will withdraw from the contract due to delayed Deliveries and/or Services and/or whether it will claim damages in lieu of performance or damages in addition to performance or will insist on the Delivery and/or Service. Claims based on default will become statute-barred within six (6) months from their accrual and knowledge, or grossly negligent lack of knowledge, of the Customer.
25. If the dispatch or delivery is delayed at the Customer's request (or for other reasons within the Customer's scope of responsibility), the Customer may be charged storage costs equal to zero-point five percent (0.5 %) of the invoice amount for each commenced month, starting on the first day after notification of the readiness for dispatch; the storage charge shall be limited to a maximum of five percent (5 %) of the invoice amount. The parties shall be entitled to prove higher or lower storage costs.

DELIVERY / ACCEPTANCE

26. If acceptance is agreed, the contractual Deliveries and/or Services must be accepted/received by the Customer, even if they show minor defects.
27. Early delivery and partial delivery shall be permissible insofar as reasonable for the Customer.

28. If acceptance is agreed and TASSTA demands the acceptance of the contractual Deliveries and/or Services after completion, the Customer shall make such acceptance without undue delay, but no later than within two (2) weeks. If the Customer fails to make acceptance in due time or refuses acceptance without justification, the acceptance shall be deemed made. The acceptance shall likewise be deemed to be made if the Deliveries – as applicable after completion of an agreed trial period – have been put to use.

TRANSFER OF RISK

The risk shall pass to the Customer:

29. for (partial) Deliveries without Services in accordance with the applicable INCOTERMS;
30. for (partial) Deliveries with Services on the day the Customer puts the Deliveries into operation, if a trial run has been agreed, after defect- free trial run. This requires that the trial run or the putting into operation takes place without undue delay after ready-for-operation installation or assembly. Otherwise, the risk shall pass to the Customer upon installation or assembly for operation;
31. for any period by which the dispatch, delivery, beginning or performance of the agreed services is delayed at the request of the Customer or for reasons within his responsibility (default of acceptance). TASSTA is prepared, however, to undertake the required safeguards at the request and cost of the Customer.

SERVICES

32. Regarding the invoicing of Services, the valid TASSTA Services Price List from time to time shall apply. In addition, the TASSTA Supplementary Conditions for Services in TASSTA Service Centers and On-Site at the Customer, as amended, shall apply with priority.

33. Cost estimates are non-binding and will be made by separate agreement. Unless agreed otherwise, the costs for preparation hereof are included in the price and will be charged separately if the order for the Services is not placed.
34. Prior to commencing the performance of Services, the items to be provided by the Customer must be available completely at the agreed site, i.e. including the accessory parts and, if products of a third party are concerned, also including the operating instructions, descriptions and part lists. The shipment and return shall be at the cost and risk of the Customer. All preparatory work to be provided by the Customer must be fulfilled before the beginning of the installation to such extent that the Services can be carried out without interruption immediately upon arrival of the staff assigned by TASSTA.
35. All supporting personnel, ancillary work outside TASSTA, articles and substances of consumption, operating power, water, connections and supply lines, protective gear and protective devices, suitable rooms (including those for storage of material) must be procured and provided in the required quality and suitability by the Customer in due time and at his own cost. Official approvals, including those for the stay of persons, must also be obtained by the Customer in due time and at his own cost, and any site-specific accident prevention regulations must be communicated.
36. Before the beginning of the performance of Services, the Customer must provide without request all necessary information regarding the position of hidden lines and the required structural data.
37. TASSTA shall be free to decide where the Services shall be performed insofar as the Services cannot be performed at one place only.
38. If performance of the Services is delayed by circumstances, especially at the construction site or at the place of performance, without the fault of TASSTA, the Customer shall reimburse TASSTA for all costs resulting from this, including the costs for waiting time and additional required travels of staff.

SOFTWARE

39. TASSTA grants the Customer the non-exclusive right to use the contractual computer programs and the related documentation (computer programs and related documentation are collectively referred to as the “Software”) exclusively for the operation of the hardware intended or supplied, therefore. The right of use is limited to the agreed period of time; in the absence of such an agreement, the right of use shall be unlimited in time. In particular, the right to use the Software shall not include the right to translate, lease, lend, sublicense distribute or publicly reproduce the Software or make it available online to third parties outside the Customer’s company.
40. Furthermore, the right to use the Software shall not include the right to reproduce the Software unless such reproduction is necessary for the operation of the hardware intended or supplied therefore or to produce a backup copy. Unless provided otherwise by mandatory law or written contractual regulations, the Customer shall not be authorized to modify, decompile, disassemble or otherwise reverse engineer the Software, whether in whole or in part, in order to acquire the source code.
41. TASSTA grants the Customer the right, which may be revoked in case of good cause, to transfer to third parties the right to use the Software granted to the Customer. The Customer may transfer the right to use the Software to third parties only together with the hardware which the Customer acquired together with the Software from TASSTA or for which the Software of TASSTA is intended. In that case, the Customer will impose the above obligations and restrictions on the third party
42. The Software will be provided solely in machine-readable form (object code) and without source code or source code documentation.
43. All other rights to the Software shall remain with TASSTA.

44. Insofar as software is provided to the Customer for which TASSTA owns only a derived utilization right and which is not open-source software (third-party software), the terms of use agreed between TASSTA and its licensor shall – also with regard to the relationship between TASSTA and the Customer – apply additionally and prior-ranking to the provisions of this Section 9. If and to the extent that open-source software is provided to the Customer, the terms of use governing such open-source software shall apply prior-ranking to the provisions of this Section 9. TASSTA will provide the source code to the Customer at least upon request if such terms of use for the open-source software require disclosure of the source code. TASSTA will make reference at a suitable place to the existence and the terms of use of third-party software so provided, including open-source software, and will make the terms of use available.

LIABILITY FOR MATERIAL DEFECTS

45. If Deliveries and/or Services show a material defect, TASSTA shall at its option and free of charge for the Customer repair, replace, or reperform (“subsequent performance”) such Deliveries and/or Services if the cause of such defect was present at the time of the transfer of the risk according to Section 7.

46. Claims of the Customer based on material defects shall become statute-barred after twelve (12) months from the date of delivery according to Sections 2.1 and 5.2 or acceptance according to Section 6. This shall not apply if the law provides for extended periods pursuant to § 438 (1) No. 2 (buildings and items for buildings) and § 634 a (1) No. 2 (defects in construction) BGB (German Civil Code) as well as in cases of intent, fraudulent concealment of the defect or noncompliance with a guaranteed quality.

47. The Customer shall give detailed written notice of any material defects to TASSTA without undue delay. If the defect notification was unjustified and the Customer should have reasonably known that defect was unjustified, TASSTA shall be entitled to demand reimbursement from the Customer for any expenses incurred by TASSTA.

48. TASSTA shall always be afforded two opportunities to make subsequent performance within a reasonable period. If such subsequent performance fails, the Customer may withdraw from the contract or reduce the compensation, notwithstanding any claims for damages according to Section 12.
49. Claims based on material defects shall not arise
- a. where the deviation from the agreed quality is only minor and/or where the usability is impaired only insignificantly;
 - b. In case of damage occurring after transfer of risk (e.g. following incorrect or negligent handling, excessive stress, unsuitable operational facilities, deficient construction work, inappropriate construction site) or in case of usual wear and tear of the objects;
 - c. in case of damage which results after transfer of risk from particular external influences (e.g. chemical, electrochemical, electrical or atmospheric) after transfer of risk which are not provided for in the contract;
 - d. where the material defect is caused either by use not foreseeable to TASSTA or by the Customer or third parties modifying or repairing the Deliveries and/or Services or using them together with products not delivered by TASSTA.
50. Expenses necessary for the purpose of subsequent performance, in particular transportation, travel, labor and material costs, will be borne by TASSTA only if the delivered item has not been taken, contrary to its intended use, to a place other than the place of delivery. If the delivered item, following its intended use, has been taken to a place other than the place of delivery, TASSTA will be responsible only for those expenses that would have been incurred if the Customer had not transferred the item; in such case, any additional costs of the subsequent performance caused by such transfer shall be borne by the Customer.
51. Software is considered to have a material defect only if the Customer can prove that there are reproducible deviations from the specifications. A material defect shall not be deemed to exist, however, if it does not manifest itself in the latest version of the Software supplied to the Customer and the use thereof by the Customer can reasonably be required. Furthermore, the Customer will not have any claims based on material defects if the material defect is based on any of the following circumstances:
- a. incompatibility of the Software with the data processing environment used by the Customer,

- b. use of the Software together with software supplied by third parties unless this is expressly provided for in the documentation of TASSTA or is otherwise permitted by TASSTA in writing;
- c. improper maintenance of the Software by the Customer or third parties.

52. Calibration consists of ascertaining the connection between the values shown by a measuring instrument or measuring system and the corresponding values – specified by standards – of a measurable variable under given conditions. The scope of the measurements is determined by the technical data and/or the related product description. Depending on the specific instruction, measured values will be documented in a test report and confirmed as correct at the time of measurement. The Customer shall have the right to satisfy itself of the proper performance of the calibration on the premises of TASSTA at the time of the calibration. The Customer cannot assert any further claims based on defects.

53. Any additional claims based on material defects are excluded.

CANCELLATION

Any party to the contract may terminate a contract for good cause:

54. after notification to the other party of a material breach of any provision of the contract, within thirty (30) days' time, if such breach has not been resolved by the expiration of that period,

55. or immediately, if bankruptcy or other insolvency, business, liquidation or assignment in favor of creditors has been initiated for the other party to the contract.

56. we may also terminate this Agreement with thirty (30) days' notice for cause if we find that you have acted or acted in a manner that could negatively affect us.

