

# Terms and Conditions for



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## § 1. Validity of Terms

1. The terms and conditions outlined in this document apply, in the absence of written agreement to the contrary, to all products and services offered by the supplier. The supplier is not bound to any terms of the buyer which deviate from the supplier's own, even in the case that these terms are emphasised, nor shall the supplier be bound to the buyer's own terms and conditions should they override the supplier's own. Receipt of any products and services – regardless of any previous objections to said products and services – shall be regarded as acceptance on behalf of the buyer, of the terms outlined by the supplier.
2. The following conditions in their respective valid form, apply to future products and services, even if the buyer either is not sent products again or is not referred to them.
3. Should the buyer in question be either a tradesman, a legal entity under public law, or a special fund under public law, neither §10.1 nor §15 of these terms and conditions apply.
4. Should the buyer be the end-user of the products or services ordered and these products or services were ordered over the internet, §9 of these terms and conditions will be rendered ineffective.

## § 2. Quotes and Orders

1. All quotes provided by the supplier are non-binding and subject to change.
2. The validity of quotes provided by the supplier is limited to a specified validity period set by the supplier at the time of quote date. Should no validity period be specified, the buyer should assume a maximum validity period of 4 weeks.
3. The supplier is only obliged to honor orders, for which written agreement exists. Should no prearranged agreement exist between the buyer and supplier, acceptance of delivery under the general terms and conditions of the supplier will be assumed.
4. The supplier cannot guarantee the quality of products and services, and upon delivery, products and services may not be in line with technical standards. In such cases, the validity of the commitment on behalf of the buyer to accept the delivery will nevertheless remain in effect.

## § 3. Prices

1. All prices, in the absence of written agreement to the contrary, are ex VAT but do not include postage and packaging.
2. The buyer is obliged to bear the cost of any postage and packaging required. Should the buyer require any special arrangements with regard to postage and packaging, said buyer will also be charged the full amount required to fulfill such arrangements.

3. The buyer will be responsible for any mandatory VAT payable on goods and services. This will be charged separately.
4. The buyer is responsible for all accrued taxes, tariffs, duties, import and export levies, so long as they are not include within the quote agreed with the supplier.
5. Should the supplier be unable to provide ordered products or services within 4 weeks after the formation of a contract with the buyer, and in which time the supplier's own costs have increased, the supplier retains the right to increase any prices originally agreed upon with the buyer. Such costs could include basic materials, supplies, operating expenses, salaries and wages, and other related costs.

#### **§ 4. Terms of Payment**

1. Terms of payment shall be set with the buyer over the course of contract negotiations. So long as no other terms of payment state otherwise, all invoiced amounts, whether they be arranged on a „cash of delivery“ (COD) or pre-payment basis, will be stated in net terms only. Other types of payment require written acknowledgement.
2. Upon agreement to different payment terms, the buyer will be required to make payment to a bank account specified by the supplier. The individual employed by the supplier and responsible for the receipt of payment shall only be liable to do so if accredited in writing.
3. The right to accept transfers or cheques is reserved by the supplier. Transfers and cheques represent only an undertaking to pay. The day of acceptance of payment shall not represent the day of payment itself. The buyer is obliged to bear any costs for discounting and collection. The supplier cannot be held liable for the timeliness of any protest.
4. Should an agreed payment period be violated, a change in the creditworthiness of the buyer occur, or ,due to subsequent deterioration of a commercial relationship, doubt about the ability or willingness of payment on behalf of the buyer occur, the supplier retains the right to change the terms of payment for any existing and future payments outstanding. The supplier also retains the right to demand immediate payment from the buyer of any outstanding debts. Should the buyer not comply with these demands within a period stated in writing by the supplier, the supplier retains the right to rescind the contract. In this case, the buyer would not be entitled to claim legal damages.
5. The accersion of any rights of retention or the set-off of counterclaims of any kind by the buyer is expressly prohibited, unless the supplier has provided written acknowledgement of the buyers rights or the buyer's rights are found to be legally valid.
6. After a first reminder, the supplier retains the right to charge reminder fees. In addition, the supplier retains the right to charge the buyer interest on arrears of 5% p. a. above the current rate of discount set by the German Central Bank so as to cover at least the rate of interest charged by the supplier's own bank.

#### **§ 5. Guidance, Documentation and Supporting Material**

1. Any clarification or guidance given to buyer regarding the completion and implimentation of a contract is made to best of the supplier's knowledge and belief.
2. Any documents made available to the buyer are to be regarded as property of the supplier and should be treated as strictly confidential. Reproduction of documents, making documents publicly available, making avaiable to third parties or in any way using documents released by the supplier for any reason other than that for which it was requested is strictly prohibited. Upon request by the supplier any released documents must be returned immediately.
3. The supplier is not bound to the content of any documents made available to the buyer, unless written confirmation to the contrary is provided by the supplier.

## **§ 6. Supplier Deadlines**

1. Agreed deadlines regarding the supplier's goods and services are deemed valid upon conclusion of the contract.
2. Should the ordered goods leave the supplier's warehouse, before the expiration of the agreed deadline, these supplier deadlines will be deemed to have been met. Should the shipment of goods be delayed for reasons caused by the buyer, the deadline will be deemed met, so long as prior to the delay, the supplier was in a position to supply the goods requested within the originally agreed time-scale.
3. The validity of supplier deadlines presupposes the timely fulfillment of commitments made on behalf of the buyer, particularly with regard to any agreements made concerning terms of payment. Should the buyer not adhere to these commitments in a timely manner and in accordance with preagreed agreements, the supplier retains the right to extend any deadline.
4. Should the supplier be culpable for not complying with the agreed deadline, the buyer retains the right to withdraw from the contract, so long as a period of grace, agreed upon in writing with the supplier, has been set and this period of grace also expires without being honored. Thereafter, subsequent appeals on behalf of the buyer are not permitted.

## **§ 7. Shipping, Packaging and Transportation**

1. The supplier's shipment duties are provided to the best of their judgement in accordance with the usual transportation methods. In particular, this refers to the supplier's choice of shipment method, haulage contractor, carrier, or other person or organisation instructed to perform shipment.
2. The supplier will not be bound to adhere to the buyer's shipment instructions in the absence of a written agreement to the contrary.
3. Part-deliveries are permissible and can be calculated separately.
4. Should the buyer demand additional shipping or packaging than that usually provided by the supplier, the full cost of all shipping and packaging shall be paid by the buyer. Should no special arrangements be required, the buyer, likewise, will bear the full cost of all shipping and packaging.

## **§ 8. Transfer of Risk**

1. All risk is transferred to the buyer, as soon as the goods to be delivered are transferred from the supplier to the haulier.
2. Should any goods ready for shipment be delayed for reasons out of the control of the supplier, all risk shall be transferred to the buyer, and will come into effect upon either written or verbal confirmation from the supplier.
3. The transfer of risk is a necessary prerequisite for the charging of goods delivered.

## **§ 9. Returns and Contract Withdrawals**

1. The supplier is in no way obliged to accept returned goods. Although the supplier is not obliged, should the supplier accept returned goods, the supplier retains the right to charge the buyer a reasonable proportion of the price of said returned goods or exchange the goods for a credit voucher. The return shipping costs and the associated risk will be borne by the buyer.
2. Should the supplier be behind on any of their obligations, the buyer has the right to withdraw from the contract.

3. In any other case, withdrawal from the contract is only possible given written agreement from the supplier. Upon this agreement the following proportions of the value of goods ordered by the buyer will need to be paid immediately; should the contract withdrawal be agreed up to 90 days before the planned delivery date- 10%, up to 60 days- 20%, up to 30 days before planned delivery- 40% and any time after the goods have already begun delivery- 50%.

## **§ 10. Right of Retention, Set-offs und Acts of Transfer**

1. The buyer has no right of retention on any goods delivered by the supplier. The same is true for any other object of the supplier's either consigned to, or otherwise made available to the buyer.
2. The buyer cannot initiate any counterclaim which the supplier has not approved or which is not legally valid.
3. The buyer is prohibited from transferring any of the obligations laid out in the buyer's contract to a third party without the consent of the supplier.

## **§ 11. Reservation of Proprietary Rights and Rights of Usufruct**

1. Any delivered goods will remain as property of the supplier until such a time when all payments outstanding for the goods in question have been settled in full.
2. The buyer is obliged, so long as the buyer is neither a tradesman, a legal entity under public law or a special fund under public law, to keep the goods, deemed to be the property of the supplier with due diligence and to insure them adequately. Should the buyer be themselves the end-user, they are obliged to handle delivered goods with reasonable care.
3. The supplier is entitled to the proprietary rights of delivered goods as well as the products which results from the delivered good's handling or processing, until such a time when all claims, both current and future, regarding the commercial obligations with the buyer have been resolved.
4. Should the buyer ever encounter insolvency, the buyer must grant the supplier free access to all rooms and places, in which the goods, to which the supplier owns proprietary rights, are held at anytime up until the opening of insolvency proceedings.
5. Should the buyer process reserved goods in combination with other, non-reserved goods, the supplier retains the right to joint proprietary rights over the new product for an amount proportional to the reserved goods' value within the new product. The supplier must be made aware by the buyer of any handling of processing of the goods under the proprietary reservation of the supplier.
6. The buyer is permitted to resell reserved goods only in the normal course of business and only under retention of title.
7. The buyer relinquishes all claims, which accrue from resale or any other claims regarding reserved goods in future, should the buyer already hold claims as security against the supplier, to which the buyer, either now or in future, may be entitled. Should the goods under reservation of proprietary by the supplier be processed in combination with any other goods, the buyer is obliged to relinquish that proportion of the purchase price attributable to the value of the above mentioned reserved goods. So long as the buyer complies with their contractual obligations, the cession of these claims will be regarded as an undisclosed assignment. The buyer is authorised to collect the afore-mentioned claim.
8. The buyer is prohibited from pawning or taking any alternative action with regard to reserved goods, which may otherwise impair or compromise the rights of the supplier.
9. The buyer is obliged to grant the immediate access of any third-party acting on behalf of the supplier to reserved goods or any other items assigned to the supplier for security in addition to any documentation necessary to initiate legal proceedings. All costs relating to third-party legal proceedings shall be borne by the buyer.

10. Should the value of the supplier's securities exceed the value of the claims against said securities by more than 20%, the buyer retains the right to demand a partial release of the securities in question.

11. If the above outlined retention of title should not be enforceable or effective under the laws of the country where the goods are located, retention of title or a corresponding form of security as lawful and enforceable under the laws of the appropriate country shall be deemed acceptable. Should the supplier deem any subsequent necessary action be required of the buyer in adherence with new security requirements, any cost payable on behalf of the buyer shall be paid immediately.

12. The supplier retains the right to the duplication, photocopying or perform any other act of reproduction of buyer-commissioned goods, for advertising purposes.

## **§ 12. Warranty**

1. For businesses the supplier offers no warranty for the goods supplied, however for consumer buyers, a warranty period of 1 year exists. The conditions of warranty are only assured upon written confirmation from the supplier.

2. The buyer retains the right to report any obviously defective goods supplied so long as this is done within 3 days of receipt of the goods and any claim must be made to the supplier in writing. Defects that go unnoticed until a later period should also be reported within 3 days and written notification sent to the supplier. Deviations from the technical specifications, shall not be deemed defects so long as these deviations fall within the normal technical boundaries of the standards of the product.

3. The supplier is obliged to rectify any established defects on any products supplied, subject to the requirements above. Should the buyer have made any attempt to repair or rectify the defect themselves, the established guarantee/replacement commitment made on behalf of the supplier under the warranty will be rendered immediately void.

4. Should the buyer discover defective goods, arrangements can be made for the goods to be sent to the supplier's service centre for inspection.

5. Intention to return defected goods for repair should be made in writing to the supplier prior to any further action. In response, the supplier will contact the buyer by telephone in order to help or to establish the source of the defect. Should the goods be deemed in need of repair by the supplier, the buyer will be issued a unique identification number, which must be attached to the return parcel and clearly displayed. Should this number be absent or unidentifiable, the return parcel may be rejected by the supplier. The costs of return delivery and the associated risk will be borne entirely by the buyer and not by the supplier.

6. The goods are to be sent to the supplier's service centre free from transport charges. The freight charges incurred in the process of returning goods for repair must be borne by the buyer.

7. Attached to the defective goods upon shipment to the service centre must be a defect description, a completed repair form provided by the supplier, as well as a copy of the invoice/delivery note.

8. In cases regarding guarantee, the return shipment arrangements are the buyer's responsibility. The buyer's obligations with regard to transportation liability are as stated above in §7.

9. Upon inspection, should the supplier find no evidence of a defect on the goods delivered, a flat rate payment shall be charged to the buyer.

10. Upon recognition of a valid defect, the supplier is obliged to either rectify the defect or endeavour to replace the goods or reasonably compensate the buyer. The buyer is subsequently prohibited from lodging further claims against the supplier, in particular claims for payment due to consequential damages or the compensation for losses caused either directly or indirectly by the defected goods.

11. The buyer is prohibited from claiming on the warranty on the grounds that the buyer was unaware of the supplier's rules and regulations. Warranty claims are also prohibited should the buyer claim that

any defect on goods delivered were caused as a result of any instruction, recommendation, or otherwise conveyed information from the supplier.

12. The supplier accepts no responsibility for material degradation caused by corrosion.

### **§ 13. Liability**

1. The buyer is prohibited from mounting damages claims under any circumstances against the supplier or any subcontracted agent of the supplier's, regardless of any legal reasons, on the grounds of a violation of either contractual, precontractual or legal obligations.

2. The supplier, in no event, shall be liable for the loss of data or the carrying of data. Should data be lost, even when the supplier is at fault, damages claims against the supplier are, under no circumstance, permissible. The buyer is obliged to arrange their own safety measures, in a customary manner.

3. Should any security provisions or protective measures be unable to prevent direct or indirect consequential damages, the supplier will be liable, under gross negligence charges, for an amount no higher than the value of the goods delivered which are directly related to the damages or consequential damages incurred. Further claims by the buyer are prohibited. The German Product Liability Act shall remain unaffected.

### **§ 14. Patents and Export Regulations**

1. Should a third party make claims against the buyer or should the buyer themselves claim an infringement of industrial property rights with regard to any goods delivered, the buyer is obliged to inform the supplier immediately. The supplier retains the right, if applicable with the support of the buyer, but at its own expense, to conduct negotiations for a settlement or any legal proceedings arising therefrom. The supplier shall not be liable for any damages as a result of patent infringement.

2. Should the products be built according to a blueprint or buyers instructions, the supplier relinquishes all liability for claims, commitments, encumbrances, and costs, which may arise from patent, trademark or registered design infringements made of behalf of third parties. Any processing costs incurred may be reasonably advanced by the supplier.

### **§ 15. Acts of God**

1. Should either party be unable to orderly perform their agreed contractual obligations due to acts of God, the respective opposite party is prohibited from asserting their rights, regardless of the legal reasons.

2. Should product and services deadlines be unmet due to any act of God, these deadlines will be reasonably extended.

3. Acts of God are defined, in particular, as war, civil unrest, acts of terror, confiscation or other such public authority action, strikes, lock-outs and other labour disputes, general lack of raw, auxiliary, and operating materials, machinery damage, machinery breakdown and other such interruptions of operations, natural phenomenon or other circumstances out of the control of either party and unavoidable without considerable cost.

### **§ 16. Final Provisions**

1. The buyer agrees that the supplier may use any data received throughout the commercial relationship with the buyer in the context of data protection for the supplier's own purposes, this use of data refers not only to the supplier itself but also includes the supplier's subsidiaries.

2. The conditions and commitments outlined above, upon written contractual acceptance, are fully valid. Any previous verbal or written agreements are hereby rendered invalid. Excluded from invalidation are those agreements that the supplier has explicitly agreed to in writing. In this case these explicitly agreed arrangements will take priority over the relevant general terms and conditions outlined in this document.

## **§ 17. Applicable Law and Area of Jurisdiction**

1. The legal relationship between the relevant parties in this document is subject to the law of the Federal Republic of Germany. The application of the uniform act on the international purchase of movable goods and the law governing the conclusion of international purchase contracts for movable goods is prohibited.

2. The contract is to be fulfilled at the headquarters or the headoffice of the supplier. The area of jurisdiction for all direct or indirect disputes between the parties involved throughout the commercial relationship will be the nearest lying appropriate area of jurisdiction to the supplier's headquarters or headoffice. Both parties are obliged to accept this area of jurisdiction and this area of jurisdiction will also apply for any disputes regarding transfer or cheque processes. The supplier does have the right, however, to pursue legal proceedings against the buyer under any other justifiable area of jurisdiction.

## **§ 18. Severability Clause**

1. Should the buyer believe any clause in the above-outlined conditions or any contractually-agreed commitments, either wholly, or in part, are, or will be, ineffective or unfeasible, the remainder of the terms or contract shall remain thereby unaffected. Both parties are obliged to work together to adjust ineffective or unfeasible clauses so as to make them acceptable, so long as they achieve, as close as is possible, the economic goals of the unacceptable provisions.

2. Amendments and supplements made to the above-outlined clauses and to any contractually-agreed commitments must be made in writing. This also applies for amendments or supplements regarding any clauses referring to the need for written confirmation.

As of: 01.01.2014