

## **Terms and Conditions PS Product Services GmbH, DE-53757 St. Augustin**

### **I. General provisions**

#### **1. General / scope of application**

1. Our Standard Terms and Conditions shall exclusively apply; we do not accept any deviating or contradictory terms and conditions imposed by customer / supplier unless we expressly accept their validity in writing. Our Standard Terms and Conditions shall also apply in case we make deliveries or provide services to customer / supplier without reservation while being aware of such deviating or contradictory terms and conditions.
2. This agreement comprises the entire agreement between the parties concerning the execution of the contract.
3. Our Standard Terms and Conditions only apply to entrepreneurs as defined in § 310 BGB (German Civil Code).

#### **2. Offer, Acceptance, Bidding Documents**

1. Our offers / orders are non-binding. The customer's / supplier's acceptances and orders shall not be deemed to be acceptances and order shall not be deemed to be accepted unless confirmed by us in writing or via facsimile.
2. We are entitled to accept the customer's / supplier's offers within two weeks after having received the offer. The customer / supplier is obligated to accept our offers / orders within a ten day's period after having received our offer / order.
3. We retain the rights of ownership and copyrights in all of our illustrations, drawings and other documents, in particular in documents marked as "confidential". Such documentation may only be made available to third parties with our express written consent.

#### **3. Terms of payments, Prices**

1. The statutory value added tax (VAT) is not included in our prices; such VAT will be itemized in the invoice separately at the rate applicable on the day of the invoicing.
2. Discounts must be agreed upon separately in writing.
3. Payments are due within 10 days after invoice date without any deductions, unless stated differently in our order confirmation. The statutory provisions regarding the default as payment shall apply.
4. Setting-off by customer /supplier is only admissible with undisputed or legally effective counterclaims or counterclaims recognized by us. In addition, the customer / supplier only has a right to retention, if its counterclaims are based on the same contractual relationship.
5. We reserve the right to modify our prices adequately. If – subsequent to the conclusion of the contract – any increases or reductions in costs are incurred to us, in particular as a result of tariff agreements or material prices changes. On request, we will provide proof of such cost increases or reductions to the customer / supplier.

#### **4. Period of Delivery / Service**

1. Prerequisite of the beginning of the period of delivery / service is the clarification of all technical and organizational details.
2. Compliance with our period of delivery / service also prerequisites timely and proper contract performance by the customer / supplier. We reserve the right of defence of non-performance of contract.
3. Should the customer / supplier default in accepting the performance offered to him or should he violate any other obligation to cooperate, we are entitled to demand reimbursement for any damages incurred to us in this context. Any other statutory claims shall remain unaffected.

4. Should the underlying contract be a contract where time is of the essence as defined in § 323 para. 2, no. 2 BGB or in § 376 HGB (German Commercial Code). We are liable in compliance with statutory provisions. We are also liable in compliance with statutory provisions in case the customer / supplier is due to our default of delivery entitled to claim that its interest in further performance of contract has lapsed.
5. We are also liable in compliance with statutory provisions in case the default of delivery is caused by intentional or grossly negligent violation of contract within our scope of responsibility; we are also liable for such acts by our representatives and vicarious agents. To the extent such default of delivery is not caused by intentional violation of contract within our scope of responsibility, our liability is restricted to foreseeable typical damages.
6. We are also liable in compliance with statutory provisions to the extent the default of delivery within our scope of responsibility is caused by culpable violation of essential contractual obligations. In this case, our liability is restricted to foreseeable typical damages.
7. We shall not be responsible for delays in delivery and services due to “force majeure” or on account of other events beyond our control incurred to us and / or our sub-suppliers and which can be proven to have a considerable influence on the completion or delivery – these include in particular strikes, lockouts, official directives, even when the terms of delivery and services have been agreed upon with binding force. In case of such hindrances, we shall be entitled whether to postpone the delivery or services by the duration of the hindrance plus a reasonable start-up period or to rescind the contract on account of that part of the contract not yet performed. If such hindrances continue for a period of more than three months, the customer / supplier shall be entitled to rescind the contract on account on that part of the contract not yet performed, after granting a grace period of reasonable length. Any claims for damages on account of the extension of the period of delivery /service are excluded, unless we have not informed the customer / supplier about such hindrances without undue delay.
8. We shall be entitled to make partial deliveries unless this is unreasonable for the customer / supplier.

## **5. Liability**

1. We are liable in compliance with statutory provisions to the extent the customer / supplier asserts claims for damages caused by intent or gross negligence including intent or gross negligence by our representatives and vicarious agents. To the extent we have not committed an intentional act of contract violation our liability is restricted to foreseeable typical damages.
2. We are liable in compliance with statutory provisions to the extent we culpably violate an essential contractual obligation. However, in such case our liability is restricted to foreseeable typical damages.
3. The liability for damages resulting from death, injury or damage to health shall remain unaffected; the mandatory provisions of the Produkthaftungsgesetz (Product Liability Act) shall remain unaffected, too.
4. Any liability for damages extending the terms of 5.1 – 5.3 is excluded irrespective of the nature of claim asserted. This applies specifically to claims for damages due to culpa in contrahendo, positive breach of contract or tortious liability as defined in § 823 BGB.
5. The limitation of liability pursuant to this clause 5. shall also apply in case the customer / supplier asserts claim of reimbursement of useless expenditures instead of performance in place of asserting claim for damages.
6. To the extent our liability is excluded or limited, this also applies to the personal liability of our salaried employees, wage earners, representatives, and vicarious agents.

## **6. Place of Jurisdiction, Applicable Law, Place of Performance**

1. Place of jurisdiction for all disputes with fully-qualified merchants as defined in the HGB, will be the seat of our principal establishment. We are, however, also authorized to bring action at the customer's legal domicile.

2. These Terms and Conditions and all legal relations between us and the customer / supplier are subject to the laws of the Federal Republic of Germany. Application of the Uniform Law on Sales of Goods (EKG and EAG) as well as the Convention on the International Sales of Goods (CSIG) is excluded.
3. Place of performance for our deliveries and other services as well as for the customer's / supplier's payments is the seat of our principal establishment unless stated differently in our confirmation.

## **II. Additional / Specific Terms and Conditions for the Sale of Goods**

### **7. Purchase Prices**

1. Our purchase prices are "ex work" excluding packaging, unless stated differently in the order confirmation. Packaging will be invoiced separately.

### **8. Passing of risk**

1. Delivery is made ex works for the account of customer and at its risk unless stated differently in our order confirmation.
2. We will insure the delivery by taking out a transport insurance policy at the customer's request and expense.

### **9. Claims based on Defects of the sold Goods**

1. The customer's warranty claims prerequisite that the customer has complied properly with its obligations to inspection and complaint pursuant to § 377 HGB.
2. Where any valid claim in respect of any sold goods is based on defect, we are entitled to subsequent performance by – at our sole discretion – either remedying the defect or delivering defect-free goods. In case of remedying the defect we shall bear all expenditure required for this purpose, in particular carriage, transport, labour and material costs to the extent these are not increased due to the fact the sold goods were transported to a location other than the place of performance.
3. If we completely fail either to remedy the defect or to deliver defect-free goods, the customer shall have the right at its discretion either to reduce the purchase price or to rescind the contract. 9.4 The customer's claim based on defects of the sold goods are subject to a limitation period of 12 months, beginning with the passing of risks.

### **10. Retention of title**

1. We retain ownership of the sold goods until all payments from the business relationship with the customer are received. In case of the customer violating its contractual obligations, in particular in case of default in payment, we are entitled to take back the sold goods. By taking back the sold goods we rescind the contract. After taking back the sold goods we are entitled to realize the sold goods; after deducting reasonable costs for the realization the proceeds of such realization shall be appropriated to the debt of the customer.
2. The customer is obligated to handle the sold goods carefully; he is in particular obligated to insure appropriately the sold goods at his own expense against fire and water damages and theft at reinstatement value.
3. In case of seizures and other interferences by third parties, the customer will immediately notify us to enable us to file a law suit pursuant to § 771 ZPO ( German Civil Procedure Act). Should the third party be unable to reimburse us for the legal fees and out-of-court expenses for a law suit pursuant to § 771 ZPO, the customer is liable for our financial loss.
4. The customer is authorized to resell the sold goods in the course of ordinary business transactions. However, the customer already now assigns to us all claims in the amount of the invoice total of our claim (incl. VAT) which arise from reselling the sold goods to its buyers or

third parties irrespective of whether the sold object was resold in its original state or after further processing. The customer is authorized to collect this debt also after assignment. Our authority to collect the debt ourselves remains unaffected. We, however, agree not to collect the debt as long as the customer meets his payment obligations from the revenues collected, as long as the customer does not default in payment and specially does not file for insolvency proceedings or the customer does not stop payments. Should, however, this be the case, we may request the customer to inform us about the assigned accounts receivable and their debtors, to provide us with all particulars required for collection, to surrender all required documentation, and to inform the debtors (third parties) about such assignment.

5. Processing or transformation of the sold goods is always done for us. In case the sold good is combined with other objects not in our possession, we acquire co-ownership in the new object corresponding to the ratio between the value of the sold goods (amount of the invoice total incl. VAT) and the other processed objects at the time of such processing. The terms applying to goods delivered under conditions also apply to the object created by way of processing.
6. We agree to release the collateral to which we are entitled upon request by the customer insofar as the realizable value of our collateral exceeds the claims to be secured by more than 10%. We are entitled to choose the collateral to be released.

### **III. Additional / Specific Terms and Conditions for the Purchase of Goods**

#### **11. Price – Terms of Payment**

1. The price itemized in our order is binding. Unless otherwise agreed upon in writing the price includes delivery free domicile and packaging.
2. The price includes the statutory VAT.
3. We can only process invoices if they indicate – in accordance with the requirements of our order – the order number stated there; supplier shall be responsible for all consequences of the failure to comply with this obligation, provided he cannot prove that he is not responsible for such non-compliance.
4. Unless otherwise provided for in writing, we shall pay the price with a 2 % discount within a period of 14 days calculated from the receipt of delivery and invoice or without deductions within a period of 30 days calculated from the receipt of the invoice.
5. We shall be entitled to the rights of set-off and retention.

#### **12. Period of Delivery**

1. The delivery period stated in our order is binding.
2. Supplier is obliged to notify us without undue delay in writing if circumstances occur or become evident from which it follows that the stipulated delivery time cannot be met.

#### **13. Passing of Risk – Documents**

1. Unless otherwise agreed upon in writing, delivery shall be effected on the basis free domicile.
2. Supplier is obligated to exactly indicate our order number on all transport papers and delivery notes. Should he fail to do so, we shall not be responsible for delays in processing them.

#### **14. Inspection for Defects – Defect Liability**

1. We shall inspect the goods within a reasonable period for any obvious discrepancies in quality and quantity; the notice of defect is in due time as long as it is received by supplier within a period of 7 working days calculated from the date of receipt of the goods or, in the case of hidden defects, from the date of their discovery.
2. We shall be entitled to the full statutory claims based on defects; in particular, we shall be entitled to demand, at our sole discretion, that the defect be remedied or defect-free goods be delivered.

3. We are entitled to remedy to defect ourselves at supplier's expense in the event of imminent danger or particular urgency.

#### **15. Product Liability – Indemnification**

1. Provided supplier is accountable for defective damage, supplier will indemnify us against any and all claims for damages asserted by third parties upon first demand, to the extent that the cause is set in the supplier's scope of control and it is personally liable itself with respect to such third party claims.
2. Provided supplier is liable pursuant to clause 15.1, it shall reimburse our expenditures arising out of or incurred in connection with a recall of the defective products pursuant to §§ 683, 670 BGB or pursuant to §§ 830,840,426 BGB. We will inform the supplier - to the extent possible and reasonable – of the nature and the extent of any recall measures to be implemented and give him opportunity to state its position. Any other statutory claims shall remain unaffected.

#### **16. Proprietary Rights**

1. Supplier warrants that no rights of third parties will be infringed in the context of its deliveries.
2. If claims are asserted against us by third party for the infringement of proprietary rights, supplier shall be obligated to indemnify us upon first demand against such claims; we shall not be entitled to enter into any agreements whatsoever with the third party without supplier's consent; this shall include, but is not limited to, a settlement agreement.
3. Supplier's indemnification obligation shall apply for all necessary expenditures we incur under or in connection with the third parties' claim.
4. Our claims pursuant to this clause 16 shall be statute-barred after a period of ten years, calculated from the date of the conclusion of the contract.

As per January 2023