

1. SCOPE

1.1 The following Terms and Conditions apply as applicable from time to time in relation to entrepreneurs ("Unternehmer") (Paragraph 14 German Civil Code (BGB)), public-sector legal entities and special bodies or funds under public law (hereinafter referred to as "Supplier") and to all present and future orders placed by us and contracts entered into with us and deliveries and services to us.
1.2 Any general conditions of business of the Supplier shall only apply if we have expressly consented to the application thereof.
1.3 Any legally significant declarations and notices that have to be given to us by the Supplier after conclusion of the contract (e.g. the setting of deadlines, notices of defects, any cancellation of the contract or reduction in the price) are required to be in writing in order to be effective.

2. CONTRACT CONCLUSION AND AMENDMENTS TO PRODUCT SPECIFICATIONS

2.1 Unless our orders contain an explicit period, during which we are bound by our order, they are revocable until we have received your confirmation of the order or - in the absence of any confirmation of the order - until the goods have been delivered to us. The Supplier is obliged to confirm our order within a deadline of three working days by means of an order confirmation in text form or by effecting the delivery of the goods. A delayed acceptance shall be deemed to be a new offer and requires our confirmation in order to create a binding contract.
2.2 Unless expressly otherwise agreed, the delivery times stated by us are binding.
2.3 We are entitled to amend place and time of the delivery as well as the packaging instructions by giving notice to you at any time prior to delivery, if and to the extent that we provide such notice with a period prior to the delivery date, which period needs to be reasonable with regard to the goods to be delivered and the other circumstances of the business relationship. Furthermore, we are entitled to amend the product specifications, if i) we provide you with a reasonable prior notice (as set out in the sentence above) and ii) such amendments can be implemented in the course of the Supplier's usual production process without any significant additional costs. We shall in each case reimburse the Supplier the proven, reasonable additional costs, which the Supplier incurs due to any of the amendments stipulated in this clause 2.3. If such amendments result in delays in delivery, which cannot be avoided by the Supplier, although the Supplier used reasonable efforts to avoid such delays, the delivery date, which was originally agreed, shall be postponed by a reasonable period accordingly. The Supplier shall notify us in writing in due time prior to the delivery date i) which additional costs and / or ii) any delay in delivery is expected by the Supplier on the basis of its reasonable assessment.

3. PRICES AND PAYMENT TERMS

3.1 The agreed prices are fixed prices. All prices are stated exclusive of value added tax, but inclusive of packaging, insurance, carriage and all and any other additional costs and expenses. Upon our request the Supplier has to take back the packaging at its own cost.
3.2 Unless otherwise agreed, payments shall be made
- within 14 days following receipt of the invoice and delivery with a deduction of a 3% cash discount, or
- within 30 days following receipt of the invoice and delivery without any deductions whatsoever.
In the case of contracts for work and services ("Werkverträge") the date of acceptance shall apply instead of the date of delivery. Acceptance for the exclusive purpose of this clause 3.2 is deemed to have been completed at the latest 15 days following delivery.
3.3 Invoices must state the date of dispatch, our order data, the date of delivery as well as the individual delivery items as per quantity and price and must be issued and sent following delivery to the invoice address stated in our order. If any of the aforementioned information is missing and, thus, the processing of the invoice in the course of our usual business operation is delayed, the agreed payment terms shall be automatically extended by a reasonable period of time.
3.4 Payment shall not be deemed to be any acknowledgement of proper performance.
3.5 Payments in advance and / or in instalments can only be demanded on the basis of a separate agreement. If such payments in advance and / or in instalments are separately agreed upon, they are also subject to the deduction of a cash discount pursuant clause 3.2.
3.6 The Supplier may only offset any counterclaim against our claims or retain payments on the basis of any such counterclaim to the extent such counterclaim is undisputed or has become final and absolute or is reciprocal to our claims.

4. DELIVERY DATES, CONTRACT PENALTY

4.1 The delivery time (delivery date or deadline) mentioned in our order or otherwise applicable in accordance with the terms and conditions set forth herein is binding. Whether the agreed delivery time has been complied with, shall depend on the date the goods have been delivered to us at the place of delivery stated by us; in the case of deliveries involving installation, assembly or other services, it shall depend on the date of their acceptance. We are under no obligation to accept delivery before the agreed delivery time. The Supplier must inform us in writing without undue delay as soon as any circumstances occur or become foreseeable due to which the Supplier cannot comply with the agreed delivery time.
4.2 In the event of any delay in delivery for which the Supplier is at fault ("Lieferverzug") we are entitled to demand - in addition to any further-reaching statutory claims - a penalty in the amount of 1% of the contract value per week of the delay, however a maximum of 5% of the contract value. This shall be without prejudice to our right to claim any further proven damage due to any delay of the Supplier's performance. The Supplier retains the right to prove that we did not suffer any damage whatsoever or less damage. The penalty shall be credited and set off against any damages for delay, which the Supplier is obliged to pay to us.

5. ACCEPTANCE, PASSING OF RISK

5.1 The shipment shall be at the Supplier's risk and cost. If, owing to a special agreement, the freight charges are to be borne by us, the Supplier must choose the mode of shipping that is most favourable for us. We are under no obligation to accept any part deliveries or excess deliveries, which have not been agreed.
5.2 The place of delivery shall be the place of delivery stated by us. The risk of accidental loss and of accidental deterioration shall pass to us upon delivery of the goods to the place of delivery. If acceptance is required, said acceptance shall be relevant for the passing of risk and must be effected by us in writing.
5.3 If we are unable to accept delivery as a consequence of circumstances (including but not limited to stoppages due to internal or third-party industrial disputes or any other force majeure event), for which we are not responsible for ("zu vertreten"), the risk shall not pass until such problem has been removed and the goods and / or services are available to us at the place of delivery. We are obliged to notify the Supplier without undue delay if any such problems of this nature have occurred or are expected to occur.

6. WARRANTY CLAIMS

6.1 If the goods and / or the services do not have the agreed quality or are defective for other reasons, our warranty claims shall be in accordance with the statutory provisions, unless otherwise agreed below.
6.2 The general limitation period for warranty claims is three years. The period begins upon delivery of the goods or acceptance of the goods and / or services, if acceptance is required. Any statutory provisions providing for longer limitation periods shall remain unaffected.
6.3 Irrespective of and in addition to the contractual warranty claims, the Supplier shall indemnify us from and against all claims by third parties, which are attributable to defects of the goods and / or services, for which the Supplier is responsible for ("zu vertreten"). In particular, the afore stated obligation to indemnify us shall apply, if and to the extent that any third-party intellectual property rights, which exist at the place of delivery and / or at the end product's places of destination (to the extent such places of destination are known to the Supplier), are infringed and the Supplier is responsible for such infringement.

6.4 The Supplier must indemnify us from and against all claims based on product liability ("Produkt-haftungsansprüche") to the extent that the cause lay within the Supplier's sphere of control and organization and the Supplier is itself directly liable in relation to third parties. If we are under an obligation to conduct a product recall vis-a-vis any third parties due to a defect of any product supplied by the Supplier, the Supplier shall bear all cost associated with such recall.
6.5 The Supplier shall be under a duty to reasonably cover its risk of liability by a product liability insurance, and to provide us with proof of such insurance coverage upon demand.

7. MINIMUM REMUNERATION

7.1 The supplier shall ensure that its employees are granted, as a minimum, the working conditions including the minimum remuneration to which they are entitled according to the currently binding German Minimum Wage Act (MiLoG), provided that neither a collective wage agreement nor a statutory instrument are applicable. This obligation expressly includes the obligation to pay the remuneration payment within the required deadline.
7.2 If, upon obtaining approval from Südpack, the supplier uses a third party (sub-contractor), the third party will be selected with careful consideration and contractually required to comply with the aforementioned obligations. The supplier shall review this on a regular basis. This responsibility to perform a review includes, amongst other aspects, the examination of the sub-contractor's quotation in order to confirm it could have been calculated on the basis of the requirements stipulated above. Upon request, the supplier will be informed by Südpack about the details regarding how the contracts with sub-contractors should be made.
7.3 Upon Südpack's request, the supplier shall provide information at any time regarding whether the requirements of the Minimum Wage Act are actually being fulfilled and to provide the Südpack with the necessary documentation to carry out the review.
7.4 The supplier exempts and holds Südpack harmless from any liability for the minimum wage and from all and any claims and costs which would occur in the case of infringement of law by the supplier. This obligation also applies if a claim is made against Südpack by employees from sub-contractors which were commissioned by the supplier. Furthermore, the supplier undertakes to compensate Südpack for any damages incurred from an infringement of law, for which the supplier is responsible.

8. THE PROVISION OF MATERIALS BY US

8.1 Materials provided by us shall remain our property and must be stored, labelled and managed separately by the Supplier free of charge. The materials may only be used for fulfilling our orders. The Supplier shall bear the risk of loss and of deterioration of the materials provided.
8.2 Any processing or transformation of the materials provided shall be performed on our behalf. The parties are in agreement that we become (co-) owners of the new or transformed object. The Supplier is obliged to keep the new object safe on our behalf, free of charge and is obliged to exercise the care of an ordinary businessman in this respect.

9. ADDITIONAL OBLIGATIONS OF THE SUPPLIER

9.1 All of the obligations under the contract must be fulfilled by the Supplier itself. A subcontractor may be engaged only with our prior written consent.
9.2 Delivery notes, consignment notes and invoices must always state our order numbers, article numbers, the delivered quantity and the delivery address in full. In addition the customs tariff number (including the country of origin) must be stated for each purchase order position.
9.3 The Supplier shall manufacture the goods in compliance with the respective quality, environmental, energy and security provisions applicable to the manufacture of the goods by Supplier. The Supplier shall comply with the German Product Safety Act (ProdSG) and with all ISO, EN, DIN and VDE standards to the extent the same are applicable to the manufacture of goods at the place of manufacturing.
9.4 To ensure the quality of its goods, the Supplier undertakes to establish, apply, maintain and continuously optimize and enhance an effective quality management system and to adopt only appropriate procedures.

10. CONFIDENTIALITY

10.1 We reserve title to and the copyrights in all pictures, plans, drawings, calculations, instructions for execution, product descriptions and other documents we provide to the Supplier. The Supplier shall not, without our explicit consent, disclose such documents to any third party or use or copy the same neither by itself nor by any third party. Upon our request, the Supplier shall return such documents to us entirely if they are no longer needed in the ordinary course of business or if negotiations have not led to the conclusion of a contract. Copies thereof made by the Supplier shall in such event be destroyed; except, however, where such copies are kept to comply with statutory archiving obligations or for the storage of data as a back-up as part of usual data storage practice.
10.2 The conclusion of this contract as well as any documents provided by us must be kept secret from third parties, including after termination of the contract. The obligation to maintain confidentiality shall only expire when and to the extent that the knowledge contained in the documents provided has become generally known.
10.3 The Supplier shall not, without our prior written consent, refer to the business relationship with us in any advertising material, brochures etc., or exhibit any goods manufactured for us.
10.4 The Supplier shall also oblige its sub-suppliers in accordance with this Section 9.

11. RESERVATION OF TITLE

11.1 Any tools, equipment and models i) that we have provided to the Supplier or ii) that are manufactured for the purpose of this contract and the cost of which are invoiced to us by the Supplier (hereinafter: "Items"), remain or become our property. The Supplier has to mark the same as our property, to carefully store them, to insure them against all kinds of damage and to solely use them for the purpose of the contracts concluded with us. The cost of maintenance and repair of the Items shall - in the absence of any other agreement - be shared equally between the parties. However, to the extent such cost are attributable to a defect in any Item manufactured by the Supplier or to improper use of the Items by the Supplier, its employees or other agents ("Erfüllungsgehilfen"), the cost shall be borne by the Supplier alone. The Supplier shall notify us of any damage to any Item without undue delay, unless such damage is not significant at all. Upon our request, the Supplier shall hand over any item to us in good condition if the same is no longer required by Supplier for the fulfilment of its obligations arising from the contracts concluded with us.
11.2 The Supplier shall only be entitled to invoke any reservation of title with regard to any Item, if we have not met our payment obligations with regard to such Item, with regard to which the Supplier retains title. Unless otherwise agreed by the parties in writing, all forms of extended or prolonged reservation of title are excluded.

12. FINAL PROVISIONS

12.1 In the event of any conflict between the German version of these terms and conditions and the English version, the German version shall prevail.
12.2 The legal relationship between us and the Supplier shall be governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods does not apply.
12.3 The place of performance for all obligations of both parties of the contract shall be the place of our registered office (seat).
12.4 The place of jurisdiction for all legal disputes arising out of or in connection with the legal relationship between us and the Supplier shall be our registered office (seat). We shall, however, be entitled to also assert our claims at the Supplier's registered office (seat).