

# General Terms and Conditions of Sale and Delivery

## SUSPA GmbH



### 1. Application

1.1 Any offer, service and delivery is exclusively performed under these General Terms and Conditions. They do also apply to all future business relationships even if they are not expressly agreed upon again. We do hereby expressly object to any deviating term or condition of the other party. Such deviating terms or conditions shall be invalid to the extent that they contradict to our Terms and Conditions.

1.2 Deviations from these General Terms and Conditions do only take effect if we do confirm our acceptance in writing. These deviating terms and conditions do only apply to the agreement referred to in the confirmation.

1.3 All documents related to our offers, such as diagrams, sketches, weight and measuring data, are binding only if they are expressly indicated as binding. We reserve our right of ownership and the copyright relating to quotations, sketches and other documents; they must not be made available to any third party.

### 2. Offer, order

2.1 Our offers are subject to change and non-binding; this does also apply to any additions, amendments or subsidiary agreements. The Customer is bound to any order placed with us for a period of two weeks upon receipt of the order by us.

2.2 Orders placed with us are not legally binding before a confirmation is given in writing. This does also apply to orders placed with us by agents, proxies or representatives. Hence, an agreement does only come into effect with the content resulting from our written order confirmation, these General Terms and Conditions as well as any written subsidiary agreement, if existing. Subsidiary agreements and amendments are not effective unless confirmed by us in writing.

2.3 If – after conclusion of the agreement – we become aware of any major deterioration of the Customer's financial and asset situation, we shall be authorized to cancel the agreement as a whole or partially. In any such case, damage claims of the Customer shall be excluded. This does also apply if the capacity to deliver, the prices or quality of supplied goods or other services of third parties, on which the proper processing of the order placed with us depend, do significantly change or if – after the conclusion of the agreement – circumstances occur, which we are not responsible for, in particular in any case of force majeure, stoppage, measures vested with public authority, and to the extent that a fulfilment of the agreement becomes unacceptable and unreasonable, e.g. in any of a change in rates of exchange by more than 5 % compared to the applicable rate upon completion of the agreement. The entitlement of the Customer to terminate the contract in case of force majeure remains unaffected.

### 3. Time of delivery and service

3.1 Dates and deadlines of delivery shall not be binding unless confirmed by us in writing; the delivery term commences on the day of the receipt of our order confirmation by the Customer, but not before we have been furnished with all required documents, permits, approvals and not before the receipt of a

prepayment, if agreed upon. If any cooperation by the Customer is necessary for the processing of the order, the proper and on-time fulfilment of such obligation is a prerequisite for us meeting our deadlines which are otherwise reasonably extended.

3.2 Any default of delivery or service due to force majeure or due to unforeseeable events, which make an on-time delivery impossible, shall result in the deadlines being reasonably extended. This does in particular apply to events such as strikes or lawful lockouts, mobilization, war, ordinances by officials or the delayed delivery of material or services by suppliers. We shall – in any such case – have the right to postpone the delivery or services by the duration of the interruption and a reasonable grace period or – if the interruptions are not of a temporary character – to cancel the agreement as a whole or partially in respect to the parts not yet fulfilled, if such interruptions do have a significant effect on the completion or delivery of the object matter of the agreement. This does also apply if the circumstances occur with any sub-contractor. We shall not be held responsible for the aforementioned circumstances even if they occur while we are defaulting on our contractual obligations. We will inform the Customer without any delay about the occurrence and the termination of such interruptions. Statutory rights to rescind or terminate the contract remain unaffected.

3.3 We shall at all times be entitled to partial deliveries and successive instalments, within a reasonable scope acceptable to the Customer. Minor excess- or short deliveries shall be deemed to be due fulfilment.

3.4 If the delivery is suspended due to a request brought forward by the Customer and if we do agree with such request, the goods reported as ready for shipping are stored at the Customer's expense. Our warehouse does invoice a rate of 1 % of the invoice amount per commenced calendar month, with the storage expense being limited to 5 % of the total value of the goods ready for delivery. We reserve the right to invoice additional expenses based on evidence. The Customer reserves the right to prove that we accrued lower or no cost at all. The duty to pay laid down in Sect. 6 remains unaffected by this provision. Furthermore, we do have the right to freely dispose of the object of delivery after unsuccessfully having allotted the Customer a reasonable period to notify us about the readiness to accept the delivery, or to effect delivery to the Customer even in the absence of such notification.

3.5 In the event that export and/or import permits for shipment to foreign countries are required, such permits shall be applied for and obtained by the Customer himself. We shall not be held liable for any default resulting from the fact that such permits, etc. are not provided.

### 4. Passage of risk, shipping and acceptance

4.1 The risk passes on to the Customer upon the goods being provided for shipment ex works. In case of partial deliveries, the risk shall pass on to the Customer upon the respective part of the delivery being provided for shipment. This does also apply if we have agreed to bear the expenses of shipping, delivery or installation.

4.2 The goods will be duly packed for shipment. Any liability by us relating to breakage, theft and similar events shall be excluded if these events have occurred after the transfer of risk. This does also apply to free-of-charge deliveries.

4.3 Upon the Customer's request we are willing to conclude a transportation, theft, fire or water damage insurance at the Customer's expense. The terms and conditions of the insurance company shall govern any damage / compensation claims.

### 5. Price

5.1 If not otherwise agreed upon, the prices apply ex works, excl. packing, shipping, insurance and the applicable statutory VAT. It is the recipient's responsibility to clear the goods through customs. Disposable and two-way packing material are billed for at cost price. Returned disposable packing material will not be accepted. Refunds are granted in cases of freight prepaid for the return of two-way packing material, if the packing material is in a state which makes it possible to use the material again.

5.2 If the Customer cancels a whole order or part of an order placed, such cancellation requires our consent. If the order is partially cancelled, we have the right to recalculate and invoice a higher unit price based on the unit price applying to a lower amount of units. This does in particular apply to call orders. Furthermore, we reserve the right to invoice cancellation fees and fees for material already procured.

### 6. Payment

6.1 If not otherwise agreed upon, our invoiced amounts fall due two weeks after the invoice date without any deduction and free of expenses. In case of a significant deterioration of the customer's financial circumstances, SUSPA is authorised to reduce the terms of payment by written notice addressed to the customer mentioning the new term of payment, regarding all open orders, not yet invoiced. The same is applicable in case of a significant reduction of the insurance limit at a commercial credit insurance. In return, the customer gets an appropriate compensation for the loss of interest, caused by the reduction of the terms of payment.

6.2 If the payment deadline is not met by the Customer, we shall have the right to charge interest on default payment at the statutory rate of 8 % in excess of the base interest rate, or – if the Customer is considered a consumer as defined in Sect. 13 German Civil Code – in the amount of 5 % in excess of the base interest rate. We reserve the right to bring forward claims for additional damages.

6.3 In any case of default of payment or if we learn about major deteriorations in the Customer's financial situation, we have the right to announce immediate maturity of the claim and to render subsequent deliveries only against cash in advance. In addition, we

have the right – after allotting a reasonable period for payment – to cancel the agreement as a whole or partially.

6.4 The Customer shall only have the right to set off against, or retain the payment – also if complaints or counter-claims are made – if the respective counter-claims are legally determined or undisputed.

6.5 Our representatives, travelling salesmen or salesmen are not authorized to accept payment, unless granted special power of attorney.

6.6 With respect to export transactions, the provision of payment documents is the prerequisite for the delivery, unless the parties have otherwise agreed upon in writing.

## **7. Retention of title of ownership**

7.1 All our deliveries are subject to an expanded and extended retention of title of ownership until all claims for payments against the Customer are settled. Thus, SUSPA remains owner of the goods, even after processing the deliveries (expanded retention of title), and has an action in rem on the resale revenue after selling-on (extended retention of title).

7.2 Any processing, remodelling or adapting of the goods being subject to the retention of title is deemed to be performed for us as producer, however, without any obligation on us. If the (co-)ownership expires due to assembly, it shall already now be agreed upon that we are granted co-ownership in the assembled goods in relation to our share in the invoice amount.

7.3 The Customer has the right to process or sell the goods being subject to the retention of title in the course of proper business transactions, if he is not at default of payment. Pledging or assignment of the goods being subject to the retention of title as security is not permitted. The Customer hereby assigns to us as security all claims and receivables resulting from the resale of the goods being subject to the retention of title, including all balance claims from current accounts. The Customer shall ensure the revocability of the collection of such assigned receivables or claims. We may disclose this assignment if the Customer does not duly and properly fulfil his payment obligations. We are under the obligation to release the securities and claims or receivables at the Customer's request, if they amount to more than 20 % of our claims against the Customer resulting from our business relationship in total.

7.4 If any third party intends to get hold of the goods being subject to the retention of title, the Customer shall without any delay notify the third party about our retained ownership and shall also notify us without any delay about such third party intending to get hold of the goods being subject to the retention of title.

7.5 If the Customer is in violation of the agreement, in particular in any case of default of payment, we have the right to take back the retained goods or to request the assignment of the Customer's claims against a third party to recover possession of the retained goods. The Customer is obliged to return the retained goods or assign the claim to recover possession. The taking back of retained goods, respectively the request to assign the claim to recover possession do constitute a cancellation of the agreement pursuant to Sect. 449 Subsect. 2 of the German Civil Code.

## **8. Warranties**

8.1 If nothing to the contrary is laid down in the following, a period of limitation for all claims related to our deliveries and services of 12 months from the day of the transfer of risk shall apply, with the exception of damage claims, for which the applicable statutory limitation period pursuant to the German Civil Code (BGB) shall apply.

8.2 All deliveries and services must be checked by the Customer immediately upon receipt of the delivery. We must be notified in writing within a period of eight days after the receipt of the delivered goods about any recognizable defects; in the event of any hidden defects this period starts upon discovery of the defect.

8.3 In any case of on-time and justified complaint we reserve the right to rectify the defect or perform a substitute delivery. If the substitute delivery is not performed – even after allotting a reasonable period for the performance of such substitute delivery – or if the defect is rectified twice and is yet unsuccessful, the Customer shall have the right to reduce the purchase price or to cancel the agreement as well as bring forward possible claims for damages pursuant to the statutory provisions of the German Civil Code; in case of a claim for damages instead of performance, our liability shall be limited to the compensation of the typical, foreseeable damage.

8.4 Our liability for substantial third-party products being part of the delivered goods is limited to the assignment of the liability claims which we have against the supplier of the third-party product. Only after a realization of the claims against the supplier remains unsuccessful can we be held liable under the conditions described in this Section 8.

8.5 We do not assume any liability for a damage which was caused by unsuitable or improper use, defective installation or operation by the Customer or a third party, ordinary wear and tear, defective or negligent handling, unsuitable expendables, substitute material, defective improvements, chemical, electrochemical or electric impacts, unless such damage is the result of our or our vicarious agents' intentional or grossly negligent action.

8.6 The Customer shall – after having notified us – give us reasonable opportunity and time to perform any improvement and substitute delivery deemed necessary at our reasonable discretion. Only in urgent cases such as events endangering the safety at the company and prevention of an unacceptably large damage – a fact which we shall be notified about without any delay –, or if we are in arrears with the rectification of the defect, shall the Customer have the right to rectify the defect himself or have a third party rectify the defect and to request compensation for the expenses accrued in this respect.

8.7 The aforementioned provisions shall be deemed to exhaustive relating to our warranty obligations.

## **9. Liability**

9.1 We shall be held liable according to the statutory provisions if the Customer raises damage claims based on intention or gross negligence, including intention or gross negligence of our agents and auxiliary persons.

9.2. We shall be held liable in case of the culpable violation of a material contractual obligation; in this case, however, our liability for simple negligence shall

be limited to the foreseeable, typically occurring damage.

9.3 The liability based on a culpable violation of life, body or health remains unaffected, this shall also apply to the liability according to the German Product Liability Act.

9.4 To the extent not expressly granted above, our liability shall be excluded.

9.5 To the extent damage claims against us are excluded or limited, this shall also apply to damage claims towards our employees, workers, agents and auxiliary persons.

## **10. Information**

As part of our calibration system SUSPA uses external laboratories, accredited according to ISO / IEC 17025, or a comparable national standard. The external laboratories are providing a factory calibration certificate that can be requested at any time. If a qualified lab is not available for a particular device, the calibration will be done by the device manufacturer.

## **11. Final provisions**

11.1 All agreements between us and the Customer shall be governed by the laws of the Federal Republic of Germany excluding its choice of law provisions and excluding the UN Convention on Contracts on the International Sale of Goods (CISG).

11.2 The place of fulfilment and legal venue shall be Altdorf / Germany or the court responsible for Altdorf / Germany, unless other statutory or legal regulations apply. However, each party shall have the right to sue the other party at the place of its registered office.

11.3 In the event that specific provisions are or become invalid or ineffective, the validity of the remaining provisions thereof shall remain unaffected.

11.4 The aforementioned provisions apply towards entrepreneurs, legal entities under public law and special public assets. Towards consumers, the statutory provisions apply.

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