

General Terms and Conditions of Business and Delivery, SEC Compounds GmbH, 73230 Kirchheim/Teck

Article 1 Scope

1. Our General Terms and Conditions of Business (T&Cs) are deemed exclusively applicable. They only apply to companies (§ 14 German Civil Code), legal entities under public law and special funds under public law. We do not recognise any differing T&Cs of the customer unless we have agreed to their validity in writing. Our T&Cs also apply if we implicitly execute delivery with the knowledge of the customer's divergent T&Cs.
2. These conditions also apply to all future business connections, even if they are not referred to explicitly in agreements.

Article 2 Offers, documentation

1. Our offers are non-binding. We can accept contract offers within a period of four weeks.
2. We reserve property rights and copyrights to images and diagrams, calculations and other files and documents; third parties may not have access to them. This applies in particular to files and documents deemed confidential; they may not be forwarded to third parties without our explicit approval.
3. Documents such as, patterns, brochures, catalogues, images, graphics, weights and dimension specifications are only deemed to be approximate guides, unless they are declared explicitly as being mandatory.

Article 3 Prices, payment terms, prepayment, right of withdrawal, default/delay, right of retention, compensation, counterclaims

1. Unless otherwise agreed, Kirchheim ex-works prices are valid, excluding shipping, insurance, customs duties, foreign taxes, etc. plus the respective valid value added tax. In the case of agreed delivery, delivery is kerbside to the stipulated place of unloading. In this case, the client is bound by this contract and the required personnel and equipment for the unloading is at their own expense.
2. The price list valid on the day of order receipt applies to all orders unless otherwise stipulated.
3. Money orders, cheques or bills of exchange are only accepted after previous agreement and only on account of performance. The customer must bear the costs for discounting and collection.
4. In the event that the customer is in default of partial payments by at least two instalments, we are entitled to demand immediate payment of the total amount, even if we have accepted cheques or bills of exchange. In this case, the documents are immediately returned for a cash payment.
5. In the event that a significant deterioration of a customer's financial situation or a change in the customer's financial situation arises after contract conclusion, (thus endangering our claim for consideration) we are entitled to refuse our services until the consideration is paid. This also applies for cases in which the customer has a similar situation at the time of contract conclusion but which only becomes known after the event. This applies in particular to cases in which judicial foreclosure actions, bill or cheque protests, personal application for insolvency, customer's request for relief from creditors, liquidation proceedings or similar cases exist. In these cases, we are entitled to set the customer a deadline for providing the consideration or security. If the consideration or security is not provided, we are entitled to withdraw from the contract.
6. Our claims can only be offset against authorised or valid claims. Counterclaims are excluded. The customer is only authorised to assert a right of retention if his or her claim is based on the same contractual relationship.

Article 4 Exemption from performance, delivery time, partial delivery, right of withdrawal

1. The timely and correct supply remains reserved unless we have guaranteed the provision of services.
2. The commencement of our specified delivery period requires the timely receipt of all documents and information to be provided by the customer, as well as the clarification of all details pertaining to the order, in particular all technical issues, approval of drawings and if applicable, services to be rendered by the customer, etc. Partial deliveries are acceptable, as long as they are reasonable.
3. We are not liable for delays in delivery due to force majeure or other circumstances we are not responsible for, in particular traffic disruptions or disruptions in operation for which we are not responsible; strikes, lock-outs, shortage of raw materials or war unless we have guaranteed performance. In this case, if we are unable to deliver within the agreed delivery period, the delivery time shall be extended appropriately. If in this case, there is an obstacle to delivery over and beyond the appropriately extended delivery time, we are entitled to withdraw from the contract.
4. If we are unable to comply with the agreed delivery period, the customer is obligated to inform us, at our request and within a reasonable period, whether or not he or she still wishes to proceed with the delivery. If the customer fails to inform us within this period, then we are entitled to withdraw from or terminate the contract.

Article 5 Passage of risk, delivery

1. Unless otherwise stated in the order confirmation, the delivery- "Kirchheim ex-works" is arranged. Shipping is always carried out at the customer's risk, including deliveries from a place other than the place of delivery, - and including freight paid deliveries and/or delivery by in-house personnel or vehicles.
2. If delivery by us is agreed, the customer must provide the skilled personnel and possibly required technical devices (e.g. forklift/loader), to ensure trouble-free unloading. It is presumed that the vehicle can drive directly to the unloading point and be immediately unloaded. If these requirements are not met then additional costs resulting therefrom will be charged separately.

Article 6 Claims for defects

1. Where feasible in the normal course of business, supplied goods shall be inspected by the customer as soon as they have been delivered. Any defects must promptly be reported to us. If the customer fails to do so, the goods are deemed accepted, except in the case of a defect, which was not noticeable during inspection. Any such defects discovered later must promptly be reported upon discovery or the goods will also be deemed accepted in view of this defect. This does not affect § 377 of the German Commercial Code. The contractor's recourse according to § 478 of the German Civil Code does not relieve the customer of his duty of inspection. If in such cases the claims reported by the buyer are not promptly reported to us, the goods are also deemed accepted in view of this defect.
2. In the event of supplementary performance because of defects, we are only obligated to pay the necessary related costs. In particular, costs for transport, travel, labour and materials, as long as these costs do not increase because the item was moved to a different location than the customer's head office or business site to which the delivery was made. This shall not apply in the event of recourse according to § 478 of the German Civil Code.
3. The customer's claims for defects including indemnity claims become time-barred within one year. This does not apply in the case of recourse according to § 478 of the German Civil Code; furthermore, this does not apply in cases under §§ 438 sec. 1 no. 2 and § 634a sec. 1 no. 2 of the German Civil Code. This also does not apply to indemnity claims resulting from death, bodily injuries or damage to health or based on a grossly negligent or intentional breach of duty on our part or on the part of our vicarious agents.

Article 7 Liability for damages and reimbursement of expenses

1. Any customer claims for damages and reimbursement of expenses (hereinafter referred to as damage claims), irrespective of the legal basis, particularly for breach of duties from the obligation and for tort are excluded.
 - a. if we have concealed a defective title or material in a fraudulent manner,
 - b. if we have assumed warranty for the characteristics of our goods or performance and a warranty case has occurred,
 - c. for any current claims relating to the Product Liability Act,
 - d. in cases of intent, gross negligence, for injury to life, body or health, or for breach of material contractual duties. The claims for damages for breach of material contractual duties, however, is limited to the damages foreseeable for the type of agreement, unless due to intent or gross negligence or for injury to life, body or health.
3. If our liability is ruled out or limited, then this also applies to the personal liability of our staff, employees, representatives and agents.
4. The above stipulations do not change the burden of proof for the disadvantage of the customer.

Article 8 Additional and deviating provisions for international contracts

1. If the customer's place of business is located outside the Federal Republic of Germany, the following provisions apply in addition to articles 1-7 and 9:
 - a. We do not assume liability for the permissibility of the contractual use of the supplied goods according to regulations of the recipient country. We are also not liable for taxes which accrue there.
 - b. We do not assume liability for delivery problems caused by governmental measures; in particular, import or export restrictions.
2. If the customer's place of business is located outside the Federal Republic of Germany and the United Nations Convention on Contracts for the International Sale of Goods (CISG, Vienna UN Sales Convention), applies in its respectively valid version, the following provisions also apply:
 - a. Amendments to the contract or termination of the contract must be in writing.
 - b. In place of articles 6 and 7 the following applies:
 - aa. We are only liable to the customer for damage compensation in accordance with statutory provisions if such a breach of contract is based on an intentional or grossly negligent breach of contract, for which we are or one of our representatives or vicarious agents is responsible for. We are also liable in accordance with the statutory provisions, provided that we breach a material contractual obligation. The preceding liability limitation does not apply to any existing claims pursuant to §§ 1 and 4 of the German Product Liability Act or in the case of claims resulting from death, physical injuries or damage to health caused by the goods.
 - bb. If delivered objects of purchase are contrary to contract, the customer only has the right to termination of the contract or to compensation delivery if claims for compensation against us have been excluded or it is unreasonable for the customer to utilise the goods contrary to contract and assert a claim for the residual damage. In these cases, we are entitled to remedial action first. If remedial action fails and/or should it lead to an unreasonable delay, the customer is entitled, at his or her discretion, to terminate the contract or to request compensation delivery. The customer is also entitled to this if remedial action causes unreasonable inconvenience or doubt exists as to the reimbursement of possible expenses incurred by the buyer.
 - cc. The customer's claims for defects become time-barred within one year.

Article 9 Assurance of retention of title

1. The title to the goods delivered remains reserved until receipt of all payments resulting from the contract.
2. The customer must immediately inform us in writing in the event of distraints or other third party interventions, in order to safeguard our rights (e.g. action arising from § 771 of the Code of Civil Procedure). If the third party is unable to reimburse us for judicial or extrajudicial costs of an action pursuant to § 771 of the Code of Civil Procedure, the customer is liable for any financial loss we incur. The customer is entitled to resell and use delivered goods in the normal course of business. However, the customer assigns us all claims in advance, which arise from the resale against his or her buyers or third parties, for the value of the goods subject to the retention of title, irrespective of whether the delivered goods were resold with or without processing. The value of the goods subject to the retention of title is deemed the final invoiced amount (including VAT) which we have stipulated. If we are co-owners of the resold goods subject to the retention of title, the assignment of the claims extends to the amount corresponding to our share in co-ownership. The customer is not entitled to any other form of disposing the goods, in particular pledging the goods or transferring the goods by way of security.
 1. The customer remains authorised to collect the claim arising from the resale, even after assignment of the goods until we revoke said authorisation. Our capacity to collect the claim ourselves remains unaffected therefrom. However, we agree to refrain from collecting the claim and from revoking the customer's authorisation to collect the claim. So long as the customer fulfils his or her payment obligations arising from the revenue collected, is not in default of payment, no application for the opening of an insolvency action has been lodged against him or her and he or she is not subject to bankruptcy proceedings. However, if this is the case, we are entitled to demand that the customer informs us of the assigned claims and the parties liable under them, makes all information required to collect the debt known, surrenders the pertinent documents and informs his or her debtor of the assignment.
 5. The processing or alteration of the delivered goods by the customer is always carried out on our behalf. The customer's expectant right to the delivered goods shall continue with respect to the altered goods. If the delivered goods are subsequently processed with objects, which are not our property, we acquire co-ownership of the new item in relation to the objective value of the delivered goods to the other processed objects at the time of the processing. Moreover, the same applies to the item produced by processing as to the delivered goods under reserve.
 6. If the delivered goods are inseparably mixed, blended or combined with objects, which are not our property, we acquire co-ownership of the new item in proportion to the objective value of the delivered goods to the other processed objects at the time of mixing, blending or combining. If the procedure takes place in a manner, which considers the customer's item as the main item, it is hereby stipulated that the customer will assign co-ownership to us on a pro rata basis and will guarantee us sole or co-ownership free of charge.
 7. At the request of the customer, we agree to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims to be secured by more than 10% or exceeds the nominal amount by more than 50%; the choice of which securities to release shall be at our discretion.

Article 10 Applicable law, place of performance, and place of jurisdiction

1. The laws of the Federal Republic of Germany apply to this contract.
2. The place of performance for all services arising from this contract is 73230 Kirchheim/Teck.
3. Place of jurisdiction for contracts with merchants, legal entities under public law, special funds under public law and with foreigners, who do not have a place of jurisdiction in Germany, is 73230 Kirchheim/Teck. However, we reserve the right to take action at the place of the customer's registered office.