

General Terms of Sale and Supply of ACP Deutschland GmbH & Co. KG

Updated 01.03.2020

I. Validity, quotations

- These General Terms of Sale and Supply apply to all - including future - contracts with companies, legal persons under public law and public law special funds covering the supply of goods and services, including service contracts and the supply of non-fungible goods. Terms of purchase of the customer shall not be recognised, even if we fail to expressly object to them again upon receipt.
- Our quotations are without obligation. Our written order confirmation applies to the scope of the subject matter of the contract. Verbal agreements, commitments, warranties, ancillary agreements and amendments are subject to our written confirmation.
- Our details on the object for delivery (e.g. weights, dimensions, values in use, capacity, tolerances and technical data), as well as our depictions thereof (e.g. drawings and illustrations) are only approximately applicable, unless applicability for the purpose contractually envisaged requires precise conformity. Such details do not constitute guaranteed quality features. Instead, they are descriptions or markings pertaining to the goods or service supplied. Deviations that are standard in the trade and those which ensue from statutory provisions or which constitute technical improvements, as well as the substitution of equivalent components, are acceptable, insofar as they do not impair the usability of the purpose contractually envisaged.
- We shall retain ownership or copyright to all the quotations and cost estimates submitted by us, as well as to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the customer. The customer must not allow third parties to access these items per se or the contents thereof without our express consent. Similarly, the customer must not disclose such items, use or replicate such items itself or allow such items to be used or replicated by third parties.

II. Prices

- Unless otherwise agreed, our prices are quoted ex-works and, in the case of domestic supplies, exclusive of VAT. Customers based in other member states of the European Union are obliged to use a valid VAT identification number and to inform us of this and any changes; if the customer does not use a valid VAT identification number, he is obliged to compensate us for the resulting damage, in particular the sales tax to be paid.
- If an appreciable change to the cost of wages, preliminary material, energy or freight occurs between conclusion of the contract and the delivery date, the agreed price can be adjusted to a reasonable extent according to the impact of the applicable cost factors.
- Unless otherwise agreed or stated on our invoices, our invoices fall due for payment immediately upon delivery without deduction of cash discount, and must be paid in a manner that allows us to access the amount on the due date. Bills of exchange and cheques will be accepted only by agreement, as conditional payment and on condition of eligibility for discount. The costs of the transaction shall be paid by the customer.
- If the payment deadline is exceeded or in case of default, we shall charge interest in the amount of eight percentage points above the base rate unless higher interest rates are agreed. We reserve the right to assert further default compensation claims.
- The customer shall be entitled to a right of retention and setoff only insofar as its counterclaims are uncontested or legally binding.

III. Delivery and transfer of risk

- Our proposed deadlines and dates for the supply of goods and services are always approximations unless a fixed deadline or a fixed date is expressly promised or agreed. If shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, carrier or other third party assigned to handle the transport procedure.
- We shall be entitled – without prejudice to our rights ensuing from payment arrears on the part of the customer – to ask the customer for an extension to the terms for goods and services, or for a postponement of delivery and completion deadlines by the period during which the customer fails to meet its contractual obligations towards us.
- We shall not be liable for any impossibility of delivery or delay in delivery caused by force majeure or other events unforeseeable at the time of contractual conclusion (e.g. interruption of operations of all kinds, difficulties procuring material or energy, transport delays, strikes, lawful lockouts, shortage of staff, energy or raw materials, difficulties obtaining the necessary official approvals, official measures or the failure to deliver, deliver properly or on time on the part of suppliers) that are beyond our control. Insofar as such events make delivery very difficult or impossible for us, and the impediment is not merely of a temporary nature, we shall be entitled to withdraw from the contract. In case of temporary impediments, the deadlines for delivery or performance shall be extended by the period of the impediment, plus a reasonable lead time. Insofar as the customer cannot reasonably be expected to accept the delivery on account of the delay, the customer shall be entitled to withdraw from the contract by providing us with an immediate written declaration.
- The customer shall accept goods notified as being ready for despatch without delay. Otherwise, we shall be entitled to send such goods or store them at the cost and risk of the customer, as we deem fit.
- When the goods are transferred to a forwarder or a carrier and/or at the start of the storage period in accordance with para. 4 above, and no later than when they leave the factory or warehouse, the risk shall transfer to the customer even if we have accepted the delivery. We shall arrange insurance only at the instruction and expense of the buyer.
- In the absence of any special agreement, we shall choose the transport means, the transport route and the forwarder and/or carrier.
- We shall be entitled to partial deliveries if the customer is able to use the partial delivery for the envisaged contractual purpose, the delivery of the remaining ordered goods is guaranteed and this does not incur any appreciable additional expense or additional costs for the customer (unless we declare our willingness to accept such costs).
- The customer must accept delivered items, even if they have minor faults.
- In case of a delay in delivery, the customer shall be entitled to grant us a reasonable period of grace and, if such period lapses without success, to withdraw from the contract insofar as the terms of the contract have not yet been fulfilled. In such cases, compensation claims shall be based on Section VII. of these Terms and Conditions.

IV. Retention of title

- All delivered goods remain our property (reserved goods) until such times as all claims, including and in particular the respective balance demands to which we are entitled under the business relationship (overall reservation of title) are settled. This applies also to future and contingent demands, for example from acceptance bills and also if payments have been made to specifically designated demands. This overall reservation of title shall lapse when all demands still outstanding at the time of payment and covered by such overall reservation of title are settled.
- The finishing and processing of the reserved goods is handled for us as the manufacturer as defined in Article 950 BGB, without placing us under any obligation. The finished or processed goods are considered reserved goods as defined by para. 1 above. In case of processing, restructuring or combining with other objects not belonging to us, we shall have co-ownership to the new item in the amount of the quota ensuing from the ratio of the invoice value of the processed, restructured or combined reserved goods to the invoice value of the other processed, restructured or combined goods.
- The customer shall be entitled to sell the reserved goods only as part of regular business activities only insofar as it is not in default, provided that the demands ensuing from such resale in accordance with No. 4. and 5. pass to us.
- In the event of resale of reserved goods or of the new processed items, the customer shall now assign to us by way of security its claim ensuing from the resale against the buyer with all ancillary rights, including any balance demands, without any special declarations being required at a later time. If the reserved goods are sold by the customer together with other goods not sold by us, the demand from the resale shall be assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other sold goods. Upon the sale of goods to which we have co-ownership, an amount proportionate to our co-ownership shall be assigned to us. We expressly hereby accept such assignment. With respect to all the claims above, we shall have the unconditional right to selection or substitute segregation.
- The customer shall be entitled to collect the claims that have been transferred to us. The authority to collect does not entitle the customer in any other way, e.g. to dispose over the claim by means of assignment or pledging. If the customer fails to meet its obligations towards us on time, we shall be entitled to revoke the collection authority and demand that the customer discloses the assignment to its buyer.
- If the value of the existing securities exceeds the secured claims by a total of more than 20 percent, we shall be obliged, at the customer's request, to release securities as we deem fit.
- If the customer falls into payment arrears or if fails to honour a bill of exchange on the due date, we shall be entitled to take back the reserved goods and enter the customer's premises for this purpose if necessary. The same applies if it becomes evident on conclusion of the contract that our payment claim ensuing from this contract or from other contracts with the customer is jeopardised by the customer's insolvency. Taking back goods does not constitute withdrawal from the contract. Provisions of the insolvency ordinance remain unaffected.
- The purchaser must communicate to us immediately any pledging or other impairment by third parties. The customer shall bear all costs incurred for discharging the seizure or returning the reserved goods, insofar as such costs are not reimbursed by third parties.

V. Condition, quality, dimensions and weights

- Only the quality set out in our product descriptions, specifications and labels applies for the quality of the goods. Official statements, recommendations or advertising do not constitute quality data.
- Our written and verbal technical advice and the advice based on tests is given to the best of our knowledge. It shall be deemed only non-binding information, also with respect to any third-party rights of protection, and does not exempt the customer from its duty to carry out its own tests on the suitability of the products delivered by us for the intended processes and purposes. The products are applied, used and processed beyond our control and therefore lie exclusively within the customer's scope of responsibility.

- Surplus or short delivery per dimension and/or item and single call-off are permissible upon order below 5 t to 30%, between 5 t and 15 t up to 20% and over 15 t up to 10%. Moreover, deviations in terms of quantity, dimensions, weight, quality and other specifications in accordance with DIN/EN are permissible if this is general practice.
- We are not able to comply with the specific individual weights and/or dimensions required for the rolls according to contract on a case-by-case basis. Therefore, 10% per item can be delivered, also in roll weights and dimensions other than those confirmed by us.
- Packaging materials and intermediate layers are also weighed. In the absence of any other agreement, the theoretical pallet weight shall be deducted.
- The weights are determined on our scales and shall be applicable for invoicing purposes. The weights are verified by presentation of the weigh bill. Objections to the delivered weight can be submitted only in writing within an exclusion period of one week following receipt of the goods at the destination.

VI. Liability for defects

- The warranty period is one year from delivery or, if acceptance is required, from acceptance. This period does not apply for compensation claims by the customer ensuing from violation of life, body or health or from intentional or grossly negligent breaches of duty by us or by our vicarious agents, which lapse in accordance with the statutory provisions.
- Noticeable defects in the goods must be notified in writing immediately and no later than 10 days after delivery; this also includes where a different item or short amount is delivered. Defects that cannot be detected within this period even by the most careful examination - by immediate suspension of any finishing and processing - immediately after the discovery, or at the latest before termination of the agreed or legal period of limitation.
- In case of justified and timely notice of defects, we can remove the defect in the manner we choose or deliver new material without defects (subsequent fulfillment). In case of non-success or refusal of the subsequent fulfillment, the customer shall be entitled to withdraw from the contract or reduce the price after the reasonable period of grace has lapsed without success. If the defect is not considerable or if the goods are already sold, processed or restructured, the customer shall only be entitled to reduce the purchase price.
- We must be given the opportunity to determine the reported faults. Reported goods or samples thereof must be returned to us immediately; we shall pay the transport costs if the complaint is justified. If the customer fails to meet these obligations or makes changes to the reported goods without our consent, it shall lose any material defect claims.
- We shall pay expenditure in connection with subsequent fulfillment only if commensurate with the purchase price of the goods. We shall not pay expenditure incurred on account of the sold goods having been used at a place other than the place of fulfillment, unless such use was for their contractual purpose.
- Following an agreed acceptance procedure of the goods by the customer, faults that were evident from the agreed type of acceptance cannot be reported. If the customer remains unaware of a fault due to gross negligence, the customer can assert rights on account of such fault only if we have deliberately failed to mention the defect or have warranted the quality of the item.
- Further claims shall be based on Section VII. of these Terms and Conditions.
- Recourse rights of the customer in accordance with Sections 478, 479 BGB remain unaffected.

VII. General limit of liability and period of limitation

- Our liability for damages, regardless of the legal grounds, in particular due to impossibility, default, defective or incorrect deliveries, breach of duties during contractual negotiations and inadmissible actions, insofar as there is a question of blame in each case, is limited in accordance with the provisions of this para. VII.
- We shall not be liable in case of ordinary negligence by our company bodies, legal representatives, employees or other vicarious agents, unless this relates to a breach of significant contractual duties. Essential contractual obligations include the obligation to deliver and install in a timely fashion goods that are free of essential defects, as well as of such material defects that significantly impair function or usability, as well as advisory, protection and due care obligations that enable the customer to use the delivered item for its contractual purpose, or that serve to protect the life and limb of the customer's personnel or its property from significant damage.
- Insofar as we are liable for compensation in accordance with para. 2, such liability is limited to damage that we have foreseen upon contractual conclusion as a possible consequence of contractual breach, and that we ought to have foreseen when applying due care and attention. Moreover, indirect damage and consequential damage incurred due to defects in the delivered item shall be reimbursable only to the extent that such damage is typically expected when the delivered item is used for its intended purpose.
- The aforementioned liability exclusions and limitations apply to the same extent to our company bodies, legal representatives, employees and other vicarious agents.
- Insofar as we give out technical information or act in an advisory capacity and this information or advice goes beyond the performance scope to which we are contractually bound, this is done without charge and to the exclusion of any liability.
- The limitations of this para. VII. do not apply for our liability for wilful conduct, guaranteed quality features, violation of life, body or health or according to the Product Liability Act.

VIII. Execution of commission orders

- Deviating from para. VII. of these Terms & Conditions, we are liable for the execution of commission orders for the proper execution of work we have carried out only up to the amount of the wage costs which we have confirmed or which have been incurred. This applies also if verifiable defects in our contract processing leads to a value reduction in the customer material provisioned for the commission orders. We are unable to warrant flawless processing during commission orders since, in this case, we rely on the surface quality of the delivered goods. The sentence above also applies for the delivery of non-contractual goods.
- Para. VI. also applies, mutatis mutandis, for the execution of commission orders.

IX. Property right infringement and tool costs

- We confirm, in accordance with the provisions of this para. IX., that the delivered item is free of industrial property rights and third party copyrights. Each contracting party will notify the other contracting party immediately in writing if any claims are asserted against it on account of such rights being infringed.
- If the delivered item infringes an industrial property right or third party copyright, we shall modify or replace the delivered item, as we deem fit, such that no third party rights continue to be infringed, but such that the delivered item continues to fulfil the contractually agreed functions, or the customer obtains the right to use by means of concluding a licence agreement. If we are unable to achieve this situation within a reasonable period, the customer shall be entitled to withdraw from the contract or reduce the purchase price accordingly. Any compensation claims of the customer are subject to the limitations of para. VII. of these General Terms of Sale and Supply.
- In case of infringement by products delivered by other manufacturers, we shall assert our claims against the manufacturers and sub-suppliers for the account of the customer or assign them to the customer, as we deem fit. Claims against us in such cases exist in accordance with the provisions of this para. IX. only if the legal enforcement of the aforementioned claims against the manufacturer and sub-supplier was unsuccessful or, on account of insolvency for example, has no changes of success.
- If deliveries are made according to drawings, samples or other details of the customer and patent, sample or brand rights or third parties are infringed as a result, the customer shall be liable to us for any damage and lost profit sustained as a result.
- If the customer pays the tool costs or part of the tool costs, a limitation in the use of the tools and in the manufacture of the goods shall occur only if the customer of the manufactured goods is entitled to industrial property rights. The sole use of the tool in this case for the customer must, however, be expressly confirmed by us. In any case, the tool remains in our direct possession and is our property.

X. Place of fulfillment, place of jurisdiction and applicable law

- The place of fulfillment and place of jurisdiction for all claims ensuing from the business relationships, specifically for our goods and services, is Bad Salzungen. This place of jurisdiction applies also for disputes regarding the formation and effectiveness of the contractual relationship. We shall be entitled to bring actions to the court of the customer's headquarters, should we see fit.
- All legal relationships between us and the customer are governed, in addition to these terms and conditions, by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980.