

General Terms & Conditions of SOMACK GmbH

As of 05.03. 20

Section 1 Scope

1. Unless otherwise agreed in writing, all deliveries and services are based on the following terms and conditions of business & delivery.
2. Conflicting terms and conditions of the customer (hereinafter "Contractor") shall only apply if these are expressly confirmed in writing by SOMACK GmbH (hereinafter "Contractor"). They also do not oblige the Contractor if the Contractor does not object in particular in individual cases. The following conditions shall also be deemed to have been agreed if the delivery or assembly is carried out without reservation in the knowledge of conflicting or deviating terms and conditions of the contractor.

Section 2 Conclusion of the contract

1. Declarations of intent to conclude the contract, as well as verbal/written ancillary agreements, shall only take effect upon written confirmation by the Contractor. Unless otherwise agreed in individual cases, the binding period for an offer is 14 days. The silence of the contractor shall in no case be deemed to be consent.
2. The Contractor reserves all property rights and copyrights to samples, cost estimates, drawings, and other information of a physical/incorporeal nature, including in electronic form. They are intended exclusively for the conclusion of a contract. Further use, in particular disclosure to third parties, is prohibited and may only be made available to third parties with written consent.
3. Obvious errors, printing, calculation, writing, and calculation errors are not binding on the contractor and do not give the customer a claim for fulfillment.
4. The customer is solely responsible for the correctness of the documents handed over to the contractor by the client or its agents, such as plans and dimensional drawings, without him being able to exclude this responsibility.
5. Insofar as the contractor is to deliver a supply intended for foreign countries, tenders and contracts shall be made exclusively on condition that any necessary export licenses are issued by the competent authorities.

Section 3 Price and Terms of Payment

1. Prices are valid in the absence of a special ex-works agreement exclusively for all incidental costs (packaging, freight, insurance, customs duties, etc.). In addition to the prices, the value-added tax is added to the respective statutory amount. Unless otherwise agreed upon at the time of conclusion of the contract, payment is due immediately after the conclusion of the contract without deductions.
2. A set-off of the client with counterclaims is excluded unless these are undisputed or legally established claims. The customer is only entitled to withhold payments to the extent that his counterclaims are also undisputed or legally established.

Section 4 Delivery time

1. The parties' agreements are decisive for the delivery time. Compliance presupposes that all commercial and technical issues between the contracting parties have been resolved and that the client has fulfilled all obligations, such as official certificates or permits or a down payment, in good time. If this is not the case, the delivery time shall be extended appropriately. This does not apply to the extent that the Contractor is responsible for the delay.
2. The delivery time is subject to proper and timely self-delivery. The client will be informed of the resulting delays as soon as possible.
3. The delivery time shall be deemed to have been met if the delivery item has left the contractor's factory by its expiry or if the customer has been notified of readiness for dispatch. In the event of a required acceptance by the customer, unless the acceptance date is justified, except in the case of justified refusal of acceptance, the notification of readiness for acceptance is decisive.
4. If the dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the costs incurred by the delay shall be charged to him one month after notification of the readiness for dispatch or acceptance.
5. If the non-compliance with the delivery period is due to force majeure, industrial disputes or other events over which the contractor cannot influence, the delivery time shall be extended appropriately. The Contractor shall inform the Client of this, in particular of the possible duration, as far as possible.
6. The Contractor has the right to withdraw immediately if the entire performance becomes permanently impossible for the Client before the transfer of risk. He may also withdraw from the contract if an order makes it impossible to execute part of the delivery and he has a legitimate interest in rejecting the partial delivery. If this is not the case, he shall pay the contract price attributable to the partial delivery. The same applies in the event of inability on the part of the client. Besides, the provisions of Section 8 Clause 1 apply. In case of impossibility or inability through the delay in acceptance or if the client is solely or largely responsible for these circumstances, he remains obliged to pay in return.
6. If the Contractor is in default with his performance and the Customer suffers damage as a result, he shall be entitled to demand a flat-rate compensation for the delay, which for each full week of delay is 0.5%, but not more than 5% of the value of that part of the total delivery which, as a result of the delay, cannot be used in time or by the contract.

7. If the client sets a reasonable period for the performance of the contractor after the due date and if this period is not met, the client is entitled to withdraw from the contract within the scope of the statutory provisions. Further claims arising from the delay in delivery are determined exclusively by the provisions in Section 8 Section 1 of these General Terms and Conditions of Business & Delivery.

Section 5 Transfer of risk and acceptance

1. The risk passes to the customer as soon as the delivery item has left the contractor's work. This applies even if partial deliveries are made or the contractor has taken over other services, such as the delivery. Insofar as an acceptance has to take place, this is decisive for the transfer of risk. It must be carried out immediately on the acceptance date, in the alternative after notification of readiness for acceptance. The customer may refuse to accept the delivery item only in the event of a substantial defect.
2. If the dispatch or acceptance is delayed or is not due to circumstances that are not within the responsibility of SOMACK, the risk passes to the customer from the date of notification of readiness for dispatch or acceptance. The contractor undertakes to take out the insurance that the client requires at the expense of the client.
3. Partial deliveries are permitted insofar as these are reasonable for the customer.

Section 6 Retention of title

1. The Contractor retains ownership of the delivery item until all payments from the specific delivery contract have been received and until all other payment claims due at the time of conclusion of the contract from the business relationship with the customer have been fully severed.
2. If the service provided by the contractor is processed or processed by the contractor or a third party commissioned by him, the contractor shall be deemed to be a manufacturer within the meaning of Section 950 of the German Civil Code (BGB) and acquire ownership of the resulting products. If the processing is carried out together with materials of others, the contractor acquires co-ownership of the new item at any degree of processing in proportion to the invoice value of its performance to the total value of the materials of the other. The same applies to cases of connection and mixing within the meaning of Sections 947, 948 of the German Civil Code (BGB). The provision in Section 947 (2) of the German Civil Code (BGB) is waived. Instead, the rules as adopted above apply to process.
3. The customer may not sell, pledge or transfer the delivery item for security. In the event of a seizure by third parties, he must notify the contractor immediately.
4. All claims arising from the sale of the delivery item shall be severed by the customer to the contractor to secure the share of ownership of the sold goods. The Contractor accepts this assignment. The client is only authorised to collect this claim as long as he duly fulfils his payment obligations towards the contractor. The assignment of the claim is excluded.
5. In the event of a breach of contract by the customer, in particular, in the event of a delay in payment, the contractor is entitled to take back the delivery item after a reminder and the customer is obliged to surrender it.

6. Due to the retention of title, the Contractor can only request the delivery item if he has resigned from the delivery contract.

Section 7 Notification of Defects and Claims for Defects

1. The customer or the recipient designated by him shall check the delivery item immediately upon receipt, in any case before working and processing. After the discovery of defects, the processing and processing of the defective delivery item must be stopped immediately. Open defects, including the absence of quality guarantees, must be reported in writing to the contractor without delay, and at the latest within seven days after receipt of the delivery item, hidden defects without delay and at the latest within seven days after their discovery. If the client fails to carry out the examination or to notify it in good time and in due time, he shall not be entitled to any claims arising from defects. The timeliness of the notification of defects depends on the date of receipt by the contractor.
2. If acceptance of an initial sample test has been agreed, a complaint of defects which the buyer could have identified with careful acceptance or initial sample examination is excluded.
3. In the case of justified complaints of defects, all parts of the contract must be repaired or replaced without defects at the discretion of the contractor, which prove to be defective as a result of a circumstance before the transfer of risk. Replaced parts become the property of the contractor. The client shall give the contractor the necessary time and opportunity to perform the subsequent performance, otherwise, he shall be exempted from liability for the resulting consequences. An exception applies only in the event of a risk of operational safety or disproportionate damage in the event of averting, whereby the contractor must be notified without delay. In this case, the customer is entitled to have the defect receded by himself or by third parties and to demand compensation from the contractor for the necessary expenses.
4. The Contractor shall bear the expenses required for subsequent performance, insofar as the notification of defects proves to be justified, insofar as he does not incur disproportionate burdens as a result. In the case of the sale of a newly manufactured item, the Contractor shall, to the extent of the statutory obligation which it meets, reimburse the expenses incurred by the Client in the context of recourse claims in the supply chain.
5. If, apart from the statutory exceptional cases, the Contractor does not comply with his obligation to perform the goods, despite a reasonable time limit set for the repair or replacement delivery due to a material defect, the customer may withdraw from the contract. If there is only a minor defect, the client has only the right to reduce the price. Otherwise, the right to reduction remains excluded.
6. Further claims of the client due to or in connection with defects or consequential damages, regardless of the legal reason, exist only by the following section 8 clause 1. of this conditions.
7. The contractor's liability for defects shall be waived if defects are due to inappropriate or improper use, faulty assembly or commissioning by the ordering party or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable equipment or chemical, electrochemical or electrical influences, unless they are the responsibility of the contractor.

8. If the client or a third party commissioned by him improperly improves, the contractor shall not be liable for the resulting consequences. The same applies to changes to the delivery item made without the prior consent of the contractor.

Section 8 Liability of the Order AndDisclaimer orLimitation

1. The Contractor shall only be liable for damages that have not arisen on the delivery item itself, regardless of the legal reason, in case of intent, negligence on the part of the statutory representatives or executive employees of the Contractor, in the event of culpable injury to life, body or health, in the event of a guarantee of quality or in the case of fraudulent concealment of a defect, in the case of liability for risks, for example under the Product Liability Act.
2. In the event of culpable breach of essential contractual obligations, the Contractor shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence, but only for the typical and foreseeable damage. Further claims are excluded.

Section 9 Limitation period

All of the client's requirements, regardless of the legal grounds, shall be time-barred in twelve months. This also applies to the limitation period for recourse claims in the supply chain in accordance with Section 445 b (1) of the German Civil Code (BGB), provided that the last contract in this supply chain is not a purchase of consumer goods. The process inhibition from Section 445 b (2) of the German Civil Code (BGB) remains unaffected. The statutory time limits apply to claims for damages in accordance with Section 7 Clause 2. They shall also apply to defects in a building or to delivery items which have been used for a building in accordance with its usual use and which have caused its defectiveness.

Section 10 Use of software

1. In so far as the service contains software, the client is granted a non-exclusive right to use the delivered software, including its documentation, for the service provided by the contractor. Use on more than one third party system or system is prohibited.
2. The client may only convert the software to the extent permitted by law (Section 69 and following. UrhG) for much of the time, revise it, translate it or convert it from the object code into the source code. The customer is obligated not to remove or change manufacturer's information, in particular copyright notices.
3. All other rights to the software and documentation, including copies, remain with the contractor or software supplier. The granting of sub-licences by the contracting authority is not permitted.

Section 11 Tools and Tools

1. The tools, tools, models, etc. manufactured/procured by the contractor for the execution of the order are not part of the delivery contract and remain the property of the contractor.

2. The tools, tools, models, etc. provided by the client remain in his possession. The contractor may require the client to recover them. If he fails to comply with this obligation within three months of delivery, the contractor shall be entitled to return to his expense or to dispose of them at his expense. The contracting authority must be made aware of this legal consequence when requesting collection.

Section 12 Place of performance, place of jurisdiction and applicable law

1. The place of performance for the delivery is the registered office of the contractor.
2. The place of jurisdiction is the court with substantive jurisdiction for the contractor's place of business. However, the contractor is also entitled to sue the client at his general place of jurisdiction.
3. The contractual relationship is governed by the law of the Federal Republic of Germany exclusively under the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. In the event of the invalidity of individual contractual terms, the remaining provisions shall remain in full force and effect. Instead of unwise provisions, such a provision shall automatically apply, which, in the context of what is legally possible, comes closest to what was economically desired in accordance with the meaning and purpose of the invalid clause.