

General delivery and payment terms and conditions JOTA AG

1. General / scope

- 1.1 Our delivery and payment terms and conditions are exclusive; terms to the contrary or deviating from our delivery and payment terms and conditions and those of the purchaser's terms and conditions which are not dealt with in the present delivery and payment terms and conditions will not be accepted by us unless we have given our express consent to their validity in writing. Our delivery and payment terms and conditions shall be applicable also in those cases where we effect delivery to the purchaser without reservation in the knowledge of the purchaser's terms and conditions being contrary to or deviating from our delivery and payment terms and conditions or not dealt with in our delivery and payment terms and conditions.
- 1.2 All agreements made between us and the purchaser for purposes of executing a contract are laid down in writing in this contract and in these simultaneously effective delivery and payment terms and conditions.
- 1.3 Our delivery and payment terms and conditions apply only vis-à-vis to a business according to the meaning of the Schweizer Obligationen Recht (Swiss law of obligations) (OR).
- 1.4 Our delivery and payment terms and conditions are applicable also to repeat orders.

2. Quotation / quotation documents

- 2.1 Our quotation is non-binding unless an agreement to the contrary has been made.
- 2.2 Illustrations, drawings, calculations and other product, application and project related documents shall remain our property and are subject to our copyright even if we pass them on to the purchaser; they must not be copied nor made available to third parties without our express prior consent in writing.

3. Prices / payment terms / minimum quantities

- 3.1 Insofar as no agreements to the contrary have been made, our prices are "ex works" exclusive of packaging and transport costs; these will be charged for separately.
- 3.2 Our prices do not include statutory VAT; this will be shown separately on the invoice at the statutory rate applicable at the date of invoice.
- 3.3 The following **minimum quantities** apply: catalogue-articles: 5 packaging units
Non-catalogue-articles: 100 pieces
Respectively **minimum order amount**: CHF 300.00 / EUR 200.00 / USD 250.00
- 3.4 The deduction of discount requires special agreement in writing.
- 3.5 Insofar as no agreement to the contrary is made, the purchase price is payable net (without deductions) within 30 days from the date of invoice. Should there be a payment delay on the part of the purchaser we shall be entitled to charge interest for delay of 8% above the base rate published at the time.
- 3.6 The purchaser shall have the right to off-set payments only if its counter-claims have been recognised by declaratory judgment, are undisputed or have been acknowledged by us. The purchaser is entitled to exercise a right of retention insofar as its counter-claim is based on the same contractual relationship.

4. Delivery / delivery period

- 4.1 Commencement of the delivery period indicated by us presupposes the clarification of all technical questions.
- 4.2 Compliance with our delivery obligation moreover presupposes the timely and proper fulfilment of the purchaser's obligations, in particular compliance with the agreed payment terms. The plea of non-fulfilment of the contract remains subject to reservation.
- 4.3 Should the purchaser be in default of acceptance or infringe other participation obligations, we shall be entitled to require compensation for the loss, including possible additional expenditure, incurred. We reserve the right to make further claims.
- 4.4 Insofar as the preconditions of section 4.3 have been fulfilled, the risk of accidental loss or accidental perishing of the purchased item passes to the purchaser at the moment when the purchaser is in default of acceptance or debtor's delay.
- 4.5 Should non-compliance with the delivery period be attributable to force majeure, e.g. mobilisation, war, terror, riot or similar events, e.g. strike, lock-out, the delivery period shall be extended by the duration of the events causing the delay, insofar as the obstacles are demonstrably of not inconsiderable influence on the completion or delivery. This applies also if these circumstances arise for sub-contractors.
- 4.6 We shall be freed from our delivery obligation if we fail to be supplied ourselves in due course with the right goods ordered for the fulfilment of the contract, this not being our fault.
- 4.7 Partial deliveries are permissible within reasonable limits.
- 4.8 We are liable in the case of a delay of delivery in accordance with the statutory provisions, insofar as the underlying purchase agreement is a fixed deal according to the meaning of OR.
- 4.9 We are also liable in accordance with the statutory provisions, insofar as the delay of delivery is due to a willful or grossly negligent infringement of the contract attributable to us; any fault committed by our representatives or person employed in the performance of our obligations is attributable to us.
- 4.10 Insofar as the delay of delivery is due merely to simple negligence and liability is not mandatory as a result of loss of life, bodily injury or injury to health, our liability for losses due to delay is limited to the purchaser being able to demand, for each complete week of the delay, 0.5 percent, though in total a maximum of 5 percent, of the price of that part of the delivery which cannot be appropriately taken into operation as a result of the delay. This does not entail any modification of the burden of proof to the detriment of the purchaser. The purchaser's statutory right of rescission remains unaffected.
- 4.11 Should the delivery be delayed for reasons for which the purchaser is responsible, storage costs amounting to 0.5 percent of the price of the items supplied, though not more than 5 percent in total, can be charged to the purchaser for every month that has commenced. On completion of an appropriate additional period, we shall be entitled to dispose of the item supplied elsewhere and to supply the purchaser after an extended period. The contractual parties are at liberty to provide proof that higher, lower or no storage costs have arisen. The statutory rights to withdraw from the contract and to demand compensation remain unaffected.

5. Passing of risk

Insofar as no agreement to the contrary has been made the delivery will be ex works in line with the international provisions of INCOTERMS 2000 which form the basis also for all other delivery terms.

6. Material defects

- We are liable for material defect as follows:
- 6.1 The purchaser agrees with us that the most cost-effective variation will be selected in the case of an additional claim to performance by the purchaser (rectification of defect or additional delivery) insofar as the purchaser does not incur any disadvantages as a result.
 - 6.2 Claims in respect of material defects become statute-barred 12 months after the passing of the risk (section 5). This does not apply insofar as longer periods are stipulated according to OR.
 - 6.3 The purchaser is required to give notice to us of material defects immediately, though no later than within seven days from the service provision (apparent defects) or the discovery of the defect, in writing. Otherwise the assertion of claims in respect of defects is debarred.
 - 6.4 In the case of notices of defect payments by the purchaser may be withheld by the purchaser to an extent appropriately commensurate with the material defects that have occurred. The purchaser may withhold payments only if a notice of defect has been put forward in respect of the justification of which there is no doubt. Should the notice of defect be wrongly issued we shall be entitled to require the purchaser to reimburse us for the expenditure incurred.
 - 6.5 First of all, we should be provided with an opportunity for additional performance within an appropriate period.
 - 6.6 Should the additional performance fail the purchaser shall be able to withdraw from the contract or reduce payment – notwithstanding any possible claims to damages.
 - 6.7 Claims based on defects cannot be lodged in the case of natural wear or damage arising after the passing of the risk as a result of faulty or negligent treatment, excessive stress, unsuitable means of operation or as a result of particular external influences not anticipated according to the contract. Should improper modifications or maintenance work be carried out by the purchaser or third parties, no claims based on defect can be lodged also in respect of these and the resulting consequences.
 - 6.8 Claims by the purchaser in respect of the expenditure for purposes of additional performance, in particular transport, toll, labour and material costs are debarred insofar as the expenditure rises due to the fact that the object of the delivery has subsequently been transported to a location other than the purchaser's establishment unless the transportation corresponds to an appropriate use.
 - 6.9 Statutory rights of recourse of the purchaser vis-à-vis ourselves shall arise only insofar as the purchaser has not made any agreements with its customer going beyond claims for defect based on Swiss law.
 - 6.10 Section 8 shall be applicable to claims for damages. Claims for damages as a result of a material defect going further or other than those dealt with in this section or in section 8 are debarred.

7. General conditions for the return of goods

- (with the exception of returns as described in section 6)
- 7.1 Before being able to approve a return we require the following information: the full item number, the quantity, designation, batch number of each package/sales unit. The packaging must be undamaged, unopened and not labelled with any additional labels/identification. We accept only complete repackaged units (no individual packages).
 - 7.2 **Non-acceptable products are the following:** all specially produced products (customer products) or all specially packaged products, all products older than 2 years (according to batch number or delivery note).
 - 7.3 The costs of control, quality assurance, possible repackaging and administration are payable in full by the purchaser. We shall deduct 20% of the value of the goods in respect of these costs. All costs in respect of returns, i.e. postage (transportation), insurance, duty, taxes etc are payable in full by the purchaser
 - 7.4 The purchaser will be responsible for the return. A credit note will be drawn up by us for all products satisfying these conditions.

8. Industrial property rights and copyrights, defects of title

- Unless otherwise agreed, we shall be obliged to effect the delivery free from industrial property rights and copyrights of third parties (in the following referred to as property rights) only in the country of the place of delivery. Insofar as a third party lodges justified claims against the purchaser as a result of infringement of property rights by deliveries made by us and utilised in line with the contract, we shall be liable vis-à-vis the purchaser within the period laid down in section 6.2 as follows:
- 8.1 We shall obtain, at our discretion and cost, either a right of use for the supplies concerned, modify them in such a way that the property right is not infringed or exchange them. Should this not be possible subject to appropriate conditions, the purchaser shall be entitled to the statutory right of rescission or reduction of purchase price. Our obligation to provide compensation is determined according to section 8.
 - 8.2 The above-mentioned obligations arise only insofar as the purchaser notifies us immediately in writing regarding claims asserted by third parties, does not acknowledge that an infringement has taken place and we retain the right to effect all aversion actions and settlement negotiations. Should the purchaser cease utilisation of the supply for purposes of reducing losses or for other important reasons, it is obliged to draw the attention of the third party to the fact that terminating the utilisation is not associated with any recognition of an infringement of property rights.
 - 8.3 Claims by the purchaser are debarred insofar as it is responsible for the infringement of property rights.
 - 8.4 Claims by the purchaser are also debarred insofar as the infringement of property rights is caused by special demands of the purchaser's, by a use not foreseeable by us or by the supply having been modified or used together with products not supplied by us.
 - 8.5 In the case of infringements of property right, the provisions of sections 6.4, 6.5 and 6.9 are applicable correspondingly to the purchaser's claims dealt with in section 7.1.
 - 8.6 Further claims of the purchaser or claims other than those dealt with in section 7 vis-à-vis us or persons employed by us in respect of a defect of title are debarred.

9. Overall liability

- 9.1 We are liable for damages and compensation for fruitless expenditure in the sense of OR (hereinafter referred to as "damages") as a result of defects of the supply or services or as a result of the infringement of other contractual or non-contractual obligations, in particular as a result of tortious acts only in the case of intent or gross negligence. The above limitation of liability does not apply to loss of life, bodily injury or injury to health, on giving of a guaranteed or accepting a procurement risk, the infringement of essential contractual obligations and in the case of liability according to the product liability law.
- 9.2 Damages due to infringement of essential contractual obligations are limited to compensation for damage which we should have anticipated on conclusion of the contract as a result of circumstances recognisable by us as possible consequence (damage typical of the contract) insofar as there is no intent or gross negligence or as a result of loss of life, bodily injury or injury to health or the giving of a guarantee or a procurement risk.
- 9.3 All limitations on liability apply to the same extent to employees.
- 9.4 The above provisions do not entail a modification of the burden of proof to the detriment of the purchaser.

10. Reservation of title

- 10.1 The objects of the delivery (reserved property) remain our property up to the fulfilment of all claims to which we are entitled vis-à-vis the purchaser as a result of the business relationship. Insofar as the value of all security interests to which we are entitled vis-à-vis the purchaser exceeds the level of all secured claims by more than 10% we shall release a corresponding portion of the security interest at the purchaser's request
- 10.2 During the existence of the reservation of title the purchaser shall not be permitted to effect a pledge or an assignment as security and the resale shall be permitted only to resellers in the ordinary course of business and only subject to the condition that the reseller receives payment from his customer or makes the reservation that ownership passes to the customer only when it has fulfilled its payment obligations.
- 10.3 In the case of pledges, seizures or other dispositions or interventions by third parties, the purchaser is obliged to notify us immediately to allow us to take legal action in line with OR. Insofar as the third party is unable to reimburse us for the legal and extra-judicial costs of an action in line with OR, the purchaser shall be liable for the loss incurred by us.
- 10.4 The purchaser shall be obliged to treat the purchased item with care; in particular, the purchaser shall be obliged to insure it adequately to the value as new at its own expense against damage by fire, water and theft. Insofar as maintenance and inspection operations are required, these will need to be carried out by the purchaser in due course at its own expense.
- 10.5 In the case of infringement by the purchaser of its obligations, in particular payment delay, we shall be entitled to withdraw from the contract and to take back the goods; the purchaser shall be obliged to surrender them. Taking back of the goods or the assertion of the reservation of title does not require the rescission of the supplier; these actions or pledging of the goods subject to reservation of title by us do not represent a rescission of the contract unless this is expressly declared by us.
- 10.6 Should the purchaser have sold the purchased item in the ordinary course of business, it passes on to us at this time all outstanding accounts to the amount of the final invoice (including VAT) of our claims arising for the purchaser from the resale vis-à-vis its customers or third parties irrespective of whether the purchased item has been sold on as such or after processing. The purchaser remains authorised to collect the receivables under the claim even after the assignment of the claim. This does not affect our authority to collect the receivables under the claim ourselves. However, we undertake to refrain from collecting the receivables for as long as the purchaser complies with its payment obligations by using the proceeds received, does not default in payment and, in particular, no petition for insolvency proceedings is filed or a stoppage of payments arises. However, should this be the case, we shall be able to require the purchaser to inform us regarding the assigned claims and the debtors involved, to provide all the information necessary for collection, to hand over the relevant documents and to inform the debtor (third party) of the assignment.
- 10.7 Processing or transformation of the purchased item by the purchaser will at all times be carried out on our behalf. Should the purchased item be processed together with other objects not belonging to us, we acquire the co-ownership of the new item in proportion of the value of the purchased item (final amount of invoice) to that of the other objects processed, at the time of processing. The same applies to the item produced by processing as for the purchased item supplied subject to reservation.
- 10.8 Should the purchased item be mixed inseparably with other objects not belonging to us, we shall acquire co-ownership of the new item in proportion of the value of the purchased item (final amount of invoice, including VAT) to the other admixed objects, at the time of mixing. Should the mixing operation take place in such a way that the purchaser's item should be regarded as the main item, it is deemed to have been agreed that the purchaser transfers to us co-ownership in proportion. The purchaser preserves the sole ownership or co-ownership which has thus arisen, for us.

11. Place of performance, venue, law applicable

- 11.1 The registered office of our company is deemed to be the place of performance, for both parties, for all rights and obligations arising from our supplies and services.
- 11.2 It is agreed that the courts of general jurisdiction of the Canton of St. Gallen are the venue for legal disputes for which the courts are competent, in business transactions with companies. We are entitled to optionally take legal action at the registered office of the purchaser.
- 11.3 The contractual relationship shall be subject to the material law of the Swiss Confederation.
- 11.4 The data provided by the purchaser will be stored and processed by EDP insofar as this is permissible according to the data protection law.

Issued: March 2009/KMA