

GENERAL TERMS AND CONDITIONS OF TRADE AND DELIVERY OF THE SOMMER GROUP



§ 1 Scope

1. These General Terms and Conditions of Trade and Delivery (GTCTD) apply to all contracts that the companies of the SOMMER Group, in particular the companies SOMMER Antriebs- und Funktechnik GmbH, APERTO Torantriebe GmbH and Groke Türen und Tore GmbH (hereinafter referred to as: "we"), conclude with companies as defined by Section 14 of the German Civil Code (BGB), a legal person under public law or a special fund under public law (hereinafter referred to as: the "customer") and apply in particular to contracts for the sale and/or delivery of goods (hereinafter referred to as "contracts"). The GTCTD do not apply to consumers as defined by Section 13 of the German Civil Code (BGB). We expressly contradict the validity of any purchasing conditions or other conditions used by the customer; these shall not become part of the contract even if we perform the contracts without any reservations in the knowledge of opposing purchasing conditions or purchasing conditions that differ from these GTCTD or any other conditions of the customer.
2. Deviations from and supplements to these GTCTD are effective only with express written confirmation by us and apply only for the respective contract for which they have been agreed. This also applies to the acceptance of guarantee declarations.
3. Our GTCTD also apply as being a master agreement for future quotations and contracts for the sale and/or delivery of goods with the same customer without attention having to be drawn to these terms and conditions by us again in each individual case.

§ 2 Quotations, contract conclusions, reservation of the right to change

1. Our quotations are without obligation at all times. A contract shall come into being, if we confirm this in writing within 14 days of receipt of the order or perform delivery within this time period.
2. We reserve the right of ownership and copyright in illustrations, drawings, calculations and other files and documents. They must not be made accessible for third parties. This applies in particular to files and documents that are marked as being confidential. Prior to their disclosure to third parties the customer requires our express approval in writing. Documents, such as samples, brochures, catalogues, illustrations, drawings, weight specifications and dimensional specifications are only binding as approximations, if they are not expressly declared in writing to be binding.
3. If we advise the customer in connection with the conclusion of the contract, this takes place to the best of our knowledge; no consultancy contract shall come into being as a result of this. Specifications and information about the suitability and use of the products are without obligation and do not release the customer from performing its own checks and tests with regard to the suitability of the delivered products for the purposes intended by the it.
4. We reserve the right to make minor product modifications and product modifications that are usual in the trade. Furthermore, we are entitled to modify the products, if this arises from a technical further development of the production processes and/or products and the modification is not unreasonable for the customer.

§ 3 Prices, terms of payment and payment default

1. Unless otherwise agreed in writing, our prices that are current at the time of conclusion of the contract shall apply at all times. All prices are "ex works" (EXW INCOTERMS 2010) and subject to the currently valid statutory rate of value-added tax and any other taxes, customs duties, levies and charges, unless otherwise agreed in writing. Cost estimates shall be remunerated.
2. We reserve the right to amend the prices, if, after conclusion of the contract, a cost reduction or cost increase occurs, in particular on account of collective wage agreements, material and energy cost changes or changes in the transport costs, provided that contract performance does not occur within four months of conclusion of the contract. The customer shall be provided on request with proof of the cost increases.
3. Unless otherwise agreed in writing, invoices are due within eight calendar days of delivery and receipt of the invoice by the customer less 2% discount or at the latest within 30 calendar days of delivery and receipt of the invoice by the customer without any deduction.
4. The customer is entitled to set-off or retention, even if a notification of defects has taken place, if its counterclaims have been legally established or are undisputed.
5. If, after conclusion of the contract, the financial circumstances of the customer experience a significant deterioration or change, through which our claim to the consideration is endangered, or if, although such a situation already existed for the customer at the time of conclusion of the contract, it did not become known to us until after the event, we can refuse our performance until the consideration has been fulfilled. A significant deterioration shall be assumed in particular in the event of enforcement measures against the customer, the rejection of an important loan, the surrender of uncovered cheques and bill protests. In these cases we can set the customer a reasonable time limit, conditional upon counter-performance, for the provision of the consideration or a surety. If the consideration or surety is then not provided, we shall be entitled to withdraw from the contract.
6. The customer shall automatically be in payment default 30 calendar days after the due date and receipt of the invoice, unless it is not responsible for the non-performance. If payment in instalments has been agreed and the buyer is in default with at least one payment instalment, the remaining debts from the contract shall become due immediately.

§ 4 Delivery dates and performance time limits

1. Delivery dates and performance time limits are binding only if we have expressly confirmed them in writing. The beginning of the delivery time specified by us requires the clarification of all technical queries between the parties to the contract.
2. Delivery dates and performance time limits shall be extended to a reasonable extent, if the customer does not perform in good time the duties to cooperate that are incumbent on it or it demands modifications of the product.
3. Compliance with the delivery dates and performance time limits is subject to us being supplied correctly and in good time by our supplier. We shall notify the customer as soon as possible of any delays that are becoming apparent.
4. Force majeure and other events coming from outside that do not indicate any operational connection, are not foreseeable and not avoidable through rational expectable due diligence release the parties to the contract for the duration of the disruption and for the scope of its effect from the performance duties that arise from the contracts. In particular labour disputes, civil unrest, floods and other natural disasters, fire, explosions, failure of operating resources, war, strikes and other industrial disturbances, embargoes and other regulatory measures or restrictions apply as being force majeure. If a state of force majeure persists for a period of more than eight weeks, each party to the contract is entitled to withdraw from the contract concerned.

§ 5 Delivery and passing of risk

1. Deliveries take place "ex works" (EXW INCOTERMS 2010), if no differing written agreements exist.
2. Part deliveries are permitted, if this can be reasonably expected of the customer.
3. If consignment by us is agreed by exception, we shall dispatch the products to the destination specified by the customer. This shall take place – also with regard to the packing – at the cost of the customer. At our duty-bound discretion we are entitled to determine the type of consignment (in particular the forwarding company and the transport route) and the packing. In the cases of sentence 1 of this paragraph the risk passes to the customer upon receipt by the customer of our readiness for dispatch note – if the latter is not contractually envisaged – at the latest upon delivery of the products to the freight forwarder, carrier or other transport entity. This also applies if part deliveries are performed or if we have accepted other services (e.g. consignment, transport or erection).
4. If delivery has been agreed by us by exception, the customer shall provide in good time expert personnel and any requisite technical equipment (e.g. a forklift truck) for the purpose of enabling unloading in compliance with the contract. The customer must ensure that the transport vehicle is able to directly approach the place of unloading and can unload there without delay. If these prerequisites do not exist, the customer must bear the additional expenses and damages incurred as a result of this.
5. If the customer culpably infringes its duties of cooperation and as a result delays acceptance of the product or finds itself in acceptance default, the customer shall bear the additional expenses incurred from this. These comprise in particular the storage costs amounting to at least 0.5% of the net invoice amount of the product concerned for each month commenced and the other damages incurred. We reserve the right to assert further claims.
6. Upon occurrence of the default with regard to the duty to cooperate or acceptance default, the risk of accidental loss and accidental deterioration of the product passes to the customer.
7. We have joined a waste management company (ISD Intersroh AG, Cologne), which operates nationwide, for the performance of our duties pursuant to the provisions of the Packaging Regulation. The taking-back of packing/packaging by us in accordance with the provisions of the Packaging Regulation is performed in such a way that the customer provides the packing/packaging originating from and used by us free of charge to the waste management company at a waste centre designated by ISD for the purpose of return/takeback.

§ 6 Delivery delay

1. In the event of delivery delay we are liable in accordance with the statutory stipulations, if the contract is exceptionally a contract with delivery by a fixed date or the interest of the customer in further performance of the contract has ceased to exist. In this case, if we are not charged with wilful intent and there is no loss of life, physical injury or harm to health, our liability is limited to the contract-typical, foreseeable damages.
2. Otherwise, in the case of a delivery delay, in addition to the consideration, the customer can also demand the compensation of any damages caused by the delay. This right to compensation for damages in addition to the consideration is, however, limited to 0.5% of the net invoice amount of the delivery concerned per completed week of delay, however, to a maximum of 5% of the net invoice amount of the delivery concerned, if we are not charged with wilful intent or gross negligence and no loss of life, physical injury or harm to health exists. The right of the customer to withdraw from the contract after expiry of the reasonable period of grace and/or to demand compensation for damages on the grounds of non-performance in accordance with Clause 11 remains unaffected.

§ 7 Reservation of title

1. We reserve the right of ownership of the products delivered to the customer (hereinafter referred to as the "goods subject to retention of title") up to full payment of the purchase price and up to the performance of all purchase price demands against the customer in existence at the time of conclusion of the contract.
2. In the event of the attachment of a debt or other interventions by third parties in the goods subject to retention of title, the customer shall notify us immediately in writing so that we can file third party counterclaim proceedings in accordance with Section 771 of the Code of Civil Procedure (ZPO) and can take other measures for protection of the ownership of the goods subject to retention of title. The customer shall support us in protecting and implementing our ownership rights. If the third party is not in a position of being able to reimburse the court costs or out-of-court costs of a legal action incurred by us in accordance with Section 771 of the Code of Civil Procedure (ZPO), the customer shall be liable for the loss incurred by us.
3. If the goods subject to retention of title are associated with or are inseparably amalgamated with items that do not belong to us, we shall acquire co-ownership in the new item in the ratio of the value of the goods subject to retention of title (invoice total amount including value-added tax) to the other connected or amalgamated objects at the time of connection or amalgamation. If the connection or amalgamation takes place in such a way that an item of the customer has to be regarded as being the main item, it shall apply as being agreed that the customer herewith transfers to us co-ownership in the new item in the ratio of the value of the goods subject to retention of title (invoice total amount including value-added tax) to the other connected or amalgamated objects at the time of connection or amalgamation. We accept the alienation.
4. The processing or transformation of the goods subject to retention of title shall be performed for us at all times by the customer. If the goods subject to retention of title are processed with objects that do not belong to the customer, we shall acquire co-ownership in the new item in the ratio of the value of the goods subject to retention of title (invoice total amount including value-added tax) to the other processed objects at the time of the processing.
5. The customer shall store free of charge for us the goods subject to retention of title, of which we are entitled to sole ownership or co-ownership. The customer is obligated to treat the contractual products with care; in particular it is obligated to insure them sufficiently at its own cost against fire, water and theft at their new value.
6. The customer is entitled to sell the goods subject to retention of title in regular business transactions. The customer herewith assigns to us the claims from the resale of the goods subject to retention of title, regardless of whether they are processed further, connected, amalgamated or not, to the amount of our amount receivable from the contract for the product. We accept this assignment. The customer is revocably entitled to collect the assigned amounts receivable. Our right to collection of the amount receivable remains unaffected: We shall not ourselves collect the amounts receivable and not revoke the collection authorization as long as the customer meets its payment obligations and is not in default with payment. For a justified reason the customer is obligated at our request to advise its purchaser of the assignment, to give us the requisite information for the purpose of asserting our rights and to surrender the documents.

§ 8 Material defects

1. The customer shall inspect the products immediately after their receipt, if this is feasible in the regular course of business, and shall notify us immediately in writing of any defects perceived while doing so, however, at the latest within five working days of delivery. Defects that were not perceivable in the regular goods received inspection shall be reported in writing by the customer, at the latest, however, within three working days of discovery of the defects. Otherwise, the delivered products shall be deemed to be approved, unless the defect has been fraudulently concealed by us.
2. If consignment by us has been agreed by exception and the delivery is incomplete or transport damage is externally perceivable, the customer shall report this to the forwarding company upon delivery. Externally non-perceivable transport damage shall be reported in text form to the forwarding company within seven days of delivery (e.g. by fax, letter or email). We must be informed about the notification in any case.
3. Unless otherwise agreed, the contractually owed condition of the products shall result exclusively from the agreed product specifications. The properties of samples and specimens are binding only if they have been expressly agreed as being the condition of the products; the agreement is required to be in writing. Specifications as to the condition and durability as well as other specifications are guarantees only if they are agreed and designated as such. The guarantee requires written confirmation by our executive management.
4. In the case of a material defect we are entitled to implement subsequent performance within a reasonable period of grace set by the customer. We are allowed to choose the type of subsequent performance. The customer is entitled to withdraw from the contract or reduce the purchase price, if the subsequent performance fails, is unreasonable for the customer, is denied by us or is not within the reasonable time limit set by the buyer. In the case of only minor defects, withdrawal is excluded.

5. In the case of subsequent performance, we are obligated to bear the expenses required for the purpose of subsequent performance, in particular the transport and material costs, provided that these are not increased by the defective product being brought to a location other than the place of performance, unless the change of location corresponds with the agreed use of the product. If we were originally not obligated to install the product, subsequent performance comprises neither removal of the defective product nor re-installation of the defect-free product. In this case the removal and installation costs are not subsequent performance costs and shall not be borne by us as part of the subsequent performance.
6. The right to claim for defects shall not exist, if the condition of the product on account of unsuitable or improper use or storage, unsuitable or improper transport or defective or negligent treatment by the customer deteriorates or a deterioration results from a typical change to the uniqueness or functionality of the products (e.g. product-typical abrasion, wear).
7. An entitlement of the customer to compensation for damages shall exist only in accordance with the mandatory statutory provisions and the following provision in Clause 11.

§ 9 Deficiencies in title

1. If the rights of third parties oppose the contractually compliant use of the products, the customer shall inform us immediately in writing about the assertion of such third party rights and grant us all powers of attorney and accord us the requisite authorities to defend the products against the asserted rights of third parties at our own cost.
2. If the rights of third parties oppose a contractually compliant use of the products, at our own option we shall dispose of the rights of the third parties or the assertion thereof by taking suitable measures, obtain the usage rights for the customer from the third party at our own cost or replace the products so that they no longer infringe the rights of third parties, if and as far as the contractual compliance of the products is not impaired by this.
3. The customer is entitled to withdraw from the contract or reduce the purchase price, if the subsequent performance in accordance with Clause 9 (2) is unreasonable for the customer, is denied by us or we do not comply with the request for subsequent performance within a reasonable time limit set by the customer. In the case of only minor impairment of the contractually compliant use of the products, withdrawal is excluded.
4. Claims on the grounds of infringement of commercial property rights or of the copyright of third parties are excluded, if this infringement is based on an instruction given by the customer, an unauthorized modification or contractually non-compliant use of the products by the customer.
5. A right to compensation for damages in accordance with the statutory provisions and the provisions set out in Clause 11 exists only if we knew or should have known of the opposing rights of the third parties.

§ 10 Limitation of the right to claim for defects

The right to claims on the grounds of material defects or deficiencies in title are limited to the expiry of 12 months after delivery of the products to the customer. This does not apply (i) to any rights to claims recorded in Clause 11, (ii) to cases of recourse in accordance with Clauses 478, 479 of the German Civil Code (BGB) or (iii) to products that represent a structure or in accordance with their usual use have been used for a structure and have caused the latter's defectiveness; in cases (i) to (iii) the statutory limitation provisions apply.

§ 11 Liability

1. We are liable without restriction in the case of culpable loss of life, physical injury or harm to health caused by us, our legal representatives or agents.
2. We are liable for our own wilful intent and gross negligence as well as for the wilful intent and gross negligence of our legal representatives and agents. If we or our legal representatives or agents are not guilty of wilful intent and there is no instance as per Clause 11 (1), the liability is, however, restricted to the contract-typical, foreseeable damages.
3. Furthermore, we are liable for the culpable infringement of such obligations, the achievement of which makes possible the performance of the contract in the first place and on the observance of which by us our legal representatives or agents the customer regularly relies and can expect to rely. If we, our legal representatives or agents are not guilty of wilful intent and there is no instance as per Clause 11 (1), the liability is, however, restricted to the contract-typical, foreseeable damages.
4. Furthermore, we are liable in the event of the fraudulent concealment of a defect or if a guarantee is accepted. In the latter case the scope of the liability is governed by the guarantee declaration. Furthermore, we are liable in cases of mandatory statutory liability, for example, pursuant to the Product Liability Act.
5. Otherwise our liability – for whatever legal reason – is excluded, unless otherwise provided for in these GTCTD.
6. If our liability in accordance with the foregoing provisions is excluded or restricted, this shall apply also for the personal liability of our corporate agencies, legal representatives, members of staff, employees and agents.

7. The customer shall inform and consult us immediately and comprehensively, if the customer wishes to lodge a claim against us in accordance with the foregoing provisions. The customer shall immediately give us the opportunity to examine the instance of damage.

§ 12 Applicable law and place of jurisdiction

1. These GTCTD and the contracts are subject to the law of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The courts with competence for the registered office of our company (i.e. the registered office of the company SOMMER Group, which concluded the contract with the customer) have exclusive competence for all disputes relating to the rights and duties arising from these GTCTD and the contracts, including their effectiveness. However, we are entitled to take legal action against the customer at his general place of jurisdiction.

§ 13 Other provisions

1. Without our previous written approval the customer is not entitled to assign to third parties any rights or claims arising from the contract.
2. Any amendments or supplements to these GTCTD are required to be in writing for them to be effective. This also applies to the amendment of the clause relating to the necessity of being in writing.
3. The ineffectiveness or non-performability of one or more provisions of these GTCTD shall leave unaffected the effectiveness of the other provisions of these GTCTD. The same applies, if these GTCTD do not include a provision that is inherently necessary. The parties to the contract shall replace the ineffective or non-performable provision with a legally admissible and performable provision that comes closest to the commercial spirit and purpose of the ineffective or non-performable provision. Should these GTCTD be incomplete, the parties to the contract shall come to an agreement with the content that they would have agreed to for the purpose of these GTCTD, if the omission from the provisions had been known at the time of concluding the contract.

§ 14 Platform for Dispute Settlement

1. If there are disputes in contractual relationships with the SOMMER group the consumer has the option to enclose extrajudicial to the platform for dispute settlement from the European commission: <http://ec.europa.eu/consumer/odr>
2. The using of the platform for dispute settlement is not obligatory it is a non-contentious option to an adjudication.
3. It is in the option of the consumer to place his charges without using the platform for dispute settlement of the EU commission whether rather the consumer is allowed to place his charges judicial.

§ 15 Alternative dispute by a consumer arbitration board

1. We explicitly advise that we do not have to be poised or committed to participate an alternative dispute resolution by an alternative dispute by a consumer arbitration board.

Valid from July 2017