

GENERAL TERMS AND CONDITIONS FOR TRANSACTIONS WITH NON-CONSUMERS



Art. 1 Scope

1. These general terms and conditions of purchase apply exclusively to all deliveries and services ordered or commissioned by SOMMER Antriebs- und Funktechnik GmbH (hereinafter referred to as the "Purchaser" or "us") from the supplier (hereinafter referred to as the "Supplier" or the "Seller"). They apply to all companies (§ 14 German Civil Code [BGB]), legal persons under public law and special funds under public law. Other general terms and conditions of business are not recognised by us unless we have expressly agreed to the applicability of such conditions in writing. Our terms and conditions of purchase continue to apply even if we accept, without reservation, deliveries from the Supplier in the knowledge of supplier terms and conditions that contradict or differ from our own terms and conditions.
2. All agreements reached between us and the Supplier for the performance of this agreement must be recorded in writing in this agreement.
3. These general terms and conditions of purchase also apply to future agreements concluded with the Supplier.

Art. 2 Ordering, documentation

1. The Supplier is required to confirm our order within two days of receipt, stating our order information including in particular the binding delivery date, the fixed price and the article number. If we do not receive confirmation of our order within this time frame, we are no longer bound to proceed with the order. If the Supplier encounters difficulties in delivering the ordered goods or services, it must inform the Purchaser immediately and in writing on receipt of the order.
2. The information we provide in relation to the production of ordered goods and drawings created on the basis of this information, as well as any drawings, diagrams, calculations or files provided by us, must not be re-used or made available to third parties by the Supplier. Such information must be kept strictly confidential. The information we provide may only be used to produce the goods we have ordered; such information remains our property and must be immediately returned to us upon completion of the order or in the event that no agreement is concluded. The obligation to maintain confidentiality remains in force even after the end of this agreement; this obligation shall be lifted only if and to the extent that the manufacturing information contained in the diagrams, drawings and other documentation becomes public knowledge.

Art. 3. Prices and payment terms

1. Unless expressly agreed otherwise in writing, delivery and transfer of risk is free of charge. In such cases, the costs of packaging, unloading and, where applicable, erection and assembly, as well as the statutory VAT, are included in the fixed price. If delivery charges are agreed, we will only cover the cost of the cheapest shipping option, unless we require a specific shipping method to be used.
2. The invoice must satisfy the relevant tax requirements and include the tax number, order information, price per item or article, the article number and the total price. Incomplete invoices will be returned for completion by the Supplier. The payment term commences upon receipt of an accurate and proper invoice. We may pay by any payment method at our discretion. Unless agreed otherwise, we will pay as follows at our discretion: 14 days under application of a 3% discount or 30 days, net cash and upon receipt of the aforementioned accurate and proper invoice in each case.
3. We reserve the right to offset or withhold payment to the extent permitted by law. The Seller may offset or withhold delivery or performance only on the grounds of legally enforced or undisputed counter-claims.
4. Any claims of the Supplier against us may only be transferred to third parties with our express agreement.

Art. 4 Delivery, transfer of risk

1. The delivery dates indicated on our orders are binding. The Supplier is obliged to inform us immediately if it encounters or becomes aware of circumstances that render it impossible to deliver by the agreed date.
2. If the Supplier defaults on its obligations, we reserve the right to charge a flat-rate fee as compensation for damages amounting to 1% of the agreed price per full week of delay, limited to a maximum of 5% of the total invoice amount. Our other legal rights (withdrawal, compensation for damages in place of performance etc.) remain unaffected. In response to our demand for compensation, the Supplier reserves the right to demonstrate that it was not responsible for the failure to fulfil its obligations. Furthermore, the Seller reserves the right to demonstrate that no damage, or a significantly lower level of damage, was suffered.
3. Partial deliveries are permissible only with our express written agreement. The additional costs associated with agreed partial deliveries must be borne by the Supplier.
4. The risk of accidental loss and deterioration is transferred to the Purchaser only once the delivered goods have been passed to the recipient indicated in the order at the destination location, in accordance with the agreement. The Supplier is required to clearly indicate our order and article number on all shipping documentation and delivery notes.

Art. 5 Rights arising from defects

1. If the delivered goods or services are defective, we may exercise the full scope of the warranty rights available to us by law. We reserve the right to require the Supplier to remedy the defect or supply a new product at our discretion. We explicitly reserve our right to claim compensation for damages, and in particular our right to compensation in place of performance. Contrary to § 442 para. 1 (2) BGB, we may also exercise our rights arising from defects, without limitation, if the defect was not known to us upon conclusion of the agreement due to gross negligence.
2. If the Seller fails to meet its obligation to subsequently fulfil the agreement – either by remedying the fault (rectification) or by supplying a new, defect-free product (replacement) at our discretion – within an appropriate time frame determined by us, we may opt to remedy the fault ourselves and demand that the Seller reimburse us for the costs incurred or pay an appropriate sum in advance. If subsequent fulfilment by the Seller fails or is unacceptable to us (e.g. due to the urgency of the order, risk to operational reliability or the threat of disproportionate levels of damage), no time frame will be stipulated; we will inform the Seller of such circumstances immediately, and in advance wherever possible.
3. The costs incurred by the Seller for testing and subsequent fulfilment of the order (including any removal and installation costs) will be borne by the Seller even if no defects are found to be present. Our liability for damages in the event of an unjustified demand for rectification of a defect remains unaffected; however, we may only be held liable if we were aware that no defect was present, or were grossly negligent in our failure to identify that no defect was present.
4. The limitation period for claims is 36 months, starting from the time of the transfer of risk. If a defect is remedied or a replacement is delivered, the warranty period is extended in accordance with statutory requirements. The three-year limitation period also applies to claims arising from deficiencies in title. The statutory limitation period for third-party return claims (§ 438 para. 1 (1) BGB) remains unaffected; other claims arising due to deficiencies in title shall not expire as long as the third party is still able to submit a claim against us, in particular where the claim has not yet expired.
5. The limitation periods under sale of goods law, including the aforementioned extension arrangements, apply to all defect claims under this agreement to the extent permitted by law. If we are entitled to file other claims for damages on the grounds of a defect outside of this agreement, the standard statutory limitation periods apply (§§ 195, 199 BGB), unless the limitation periods under sale of goods law are longer.
6. The legal regulations (§§ 377, 381 of the German Commercial Code [HGB]) apply in relation to the commercial obligation to inspect goods and provide notice of defects, subject to the following proviso: Our obligation to inspect the goods is limited to defects that are clearly evident during our incoming goods checks, based on an external examination of the product and the delivery documentation, or during our random quality sampling checks (e.g. transport damage, incorrect deliveries or incomplete deliveries). If an acceptance stage has been agreed, we have no obligation to inspect the goods. In all other cases, a judgement will be made based on how feasible an inspection is in the individual circumstances, taking normal business operations into account. Our obligation to report defects identified at a later stage remains unaffected. We are required to report clearly evident defects within five days. Concealed defects must be reported within two weeks of discovery.

Art. 6 Product liability, exemption, liability insurance

1. The Supplier will ensure and guarantee that the ordered and supplied goods and services comply with the standards, particularly technical regulations, that apply in Germany (e.g. the latest version of the German Equipment and Product Safety Act etc.). This provision also includes the product requirements arising from the applicable European Union regulations.
2. If the Supplier is responsible for product damage, it must release us, on our first request, from any liability for claims for damages from third parties, if the reason for such a claim lies in its domain or falls under its organisational responsibility and if it is required to accept liability towards external parties.
3. As part of its obligation to accept liability for damages as described in (1), the Supplier is also required to reimburse us for any costs arising from or in conjunction with any recall campaign performed or to be performed by us. Where it is possible and appropriate to do so, the Supplier will be informed of the contents and scope of any such recall campaign and given an opportunity to issue a response. All other legal claims remain unaffected.
4. The Supplier is obliged to take out and maintain product liability insurance with sufficient cover for personal and property damage; other claims made by us against the Supplier remain unaffected.

Art. 7 Property rights

1. The Supplier guarantees that the delivery does not infringe the property rights, particularly the commercial property rights, of any third party.
2. If a complaint is made against us in relation to the infringement of such rights, the Supplier is required to release us from liability from any such claims on our first written request; we will refrain from entering into any agreements with third parties in relation to such matters, and in particular from agreeing to pay any compensation, without the agreement of the Supplier.

GENERAL TERMS AND CONDITIONS FOR TRANSACTIONS WITH NON-CONSUMERS



3. The Supplier's obligation to release us from liability applies in all cases arising from or in connection with third-party claims.
4. The limitation period for the aforementioned claims is as described in Art. 5(5).

Art. 8 Retention of ownership rights

1. Any components we make available to the Supplier remain our property. The processing and modification work carried out by the Supplier is performed on our behalf. If goods subject to retention of title are processed with goods that do not belong to us, we shall acquire co-ownership rights for the new item, proportionate to the value of our goods (purchase price plus VAT) and the other processed goods at the time of processing.
2. If goods we provide are permanently amalgamated with other goods that do not belong to us, we shall acquire co-ownership rights for the new item, proportionate to the value of the provided goods (purchase price plus VAT) and the other amalgamated goods at the time of amalgamation. If the goods are amalgamated in such a way that the Supplier's product becomes the primary product, the Supplier agrees to transfer partial ownership of the product to us; the Supplier will store the solely owned or co-owned product on our behalf.
3. Tools remain our property; the Supplier is required to use the tools exclusively in the production of the goods ordered by us. The Supplier is obliged to insure any tools belonging to us at its own cost against damage caused by fire, water and theft; the insurance must provide sufficient cover to replace damaged tools at their new value. The Supplier hereby assigns any claims to damages under this insurance policy to us, and we hereby accept the assignment of such claims. The Supplier is obliged to carry out, at its own cost and in good time, any required maintenance, inspection, servicing and repair work on tools owned by us. The Supplier must immediately notify us of any defects; if the Supplier culpably neglects to fulfil this requirement, claims for damages remain unaffected.
4. The Supplier is required to keep all diagrams, drawings, calculations and other documents and information it receives strictly confidential. Such documents and information may only be disclosed to third parties with our express permission. The obligation to maintain confidentiality remains in force even after the end of this agreement; this obligation shall be lifted if and to the extent that the manufacturing information contained in the diagrams, drawings and other documentation becomes public knowledge.
5. If the value of the securities provided to us in accordance with para. 1 or para. 2 exceeds the purchase price of all of our unpaid goods subject to retention of title by more than 10%, we will release the securities of our choosing at the Supplier's request.

Art. 9 Applicable law, place of fulfilment, jurisdiction

1. The law of the Federal Republic of Germany applies to this agreement.
2. The place of fulfilment for all services arising under this contract is DE-73230 Kirchheim unter Teck.
3. In the event that this agreement is concluded with a commercial entity, a legal person under public law, a special fund under public law or a foreign entity with no local place of jurisdiction, the exclusive place of jurisdiction is DE-73230 Kirchheim unter Teck.

Art. 10 Miscellaneous

Should any provision of this agreement be or become invalid, this shall not affect the validity of the remaining provisions. In such cases, the parties undertake to replace the invalid provision with a new provision which reflects the commercial agreement that would have been reached between the parties, had they recognised the invalidity of the original provision.

Kirchheim unter Teck, dated 14/02/2017