

# General Terms and Conditions for the Sale and Supply of Goods

## SUPLEX GmbH

### I. Scope

1. All offers, acceptances, confirmations of order or all our sales and other supplies and performances to entrepreneurs shall exclusively be governed by the present General Terms and Conditions for the Sale and Supply of Goods.
2. The application of the Purchaser's general terms and conditions of business is hereby repudiated. The present General Terms and Conditions for the Sale and Supply of Goods shall also apply if we render the performance to the Purchaser without any reservation despite being aware of conflicting or deviating terms and conditions of the Purchaser.
3. Any possible mistakes contained in sales prospects, price lists or other documentation may be rectified by us without incurring any responsibility for damages arising from such mistakes.
4. Our Terms and Conditions for Sale shall only apply in relation to entrepreneurs within the meaning of section 14 German Civil Code (*Bürgerliches Gesetzbuch*).

### II. Conclusion of a Contract

1. Our offers shall be subject to confirmation. The Purchaser's order shall be deemed a binding offer that we may accept within two weeks time by written confirmation of the order (email shall suffice) or by the supply of the ordered goods.
2. Any oral promises that our representatives or other auxiliary persons make shall be deemed invalid unless being confirmed by us in writing.
3. Ownership to and copyrights of pictures, drawings, calculations and other documents shall be reserved. This reservation shall include any written documents marked "confidential". The Purchaser shall not be entitled to pass such documents on to third parties without us giving prior consent explicitly and in writing. We reserve the right to make any changes to specifications in descriptions of goods to take into account any statutory requirements provided that this change does not lead to the impairment of the order in relation to quality and suitability.

### III. Prices

1. Prices are in Euro and exclude packing, postage, freight as well as value-added tax under the statutes in force on the day of invoicing all of which the Purchaser shall bear.
2. Prices do not include taxes, fees, customs duties or similar charges arising outside of the Federal Republic of Germany out of the conclusion or execution of the contract. In case we are debited with such charges we shall be entitled to claim the same from the Purchaser. This shall equally apply if such charges or insurance costs are introduced or increased within the Federal Republic of Germany subsequent to the conclusion of the contract.
3. If following conclusion of the contract considerable cost increases or decreases take place without our influence and which were not foreseeable, particularly by reason of tariff agreements or material price changes we reserve the right to change our prices in the same proportion. We shall provide evidence of these to the customer upon request. Does this higher price exceed the agreed price by 20% or more, the Purchaser shall be entitled to withdraw from the contract (*vom Vertrag zurückzutreten*). To assert this right the Purchaser shall be obliged to declare the withdrawal (*den Rücktritt zu erklären*) without undue delay.

### IV. Terms and Conditions of Payment

1. Unless otherwise agreed the purchase price shall fall due within ten days from the receipt of the goods or from the other performance. Timeliness of the payment shall be determined by the date of deposit into our bank account. In case the Purchaser fails to pay in due time he shall be deemed in default (*Verzug*).
2. Unless otherwise agreed the price shall be payable without deduction.
3. Bills of exchange and cheques are only acceptable on account of payment and shall be deemed to be payment upon being cleared or cashed in.
4. The Purchaser shall raise any objections to our invoices within two weeks from the receipt of the particular invoice. In the absence of such objection made in due form and time, the particular invoice shall be deemed approved. We are obliged to refer to this effect in our invoices.
5. The Purchaser shall not be entitled to set off a counterclaim against our payment claim unless the counterclaim is undisputed, ready for decision or ascertained by non-appealable court decision.
6. The Purchaser shall not have any right of retention unless his counterclaim is based on the identical contractual relationship.
7. In derogation of section 195 of the German Civil Code, our payment claims shall become statute-barred after five years. The beginning of this term shall be subject to section 199 of the German Civil Code.

### V. Withdrawal

1. In case of late delivery due to force majeure or late delivery of our own suppliers we are entitled to withdraw from the contract according to the provisions set out in item VI. 3 of these conditions.
2. Further, we shall be entitled to withdraw from the contract if the Purchaser has filed a petition to open insolvency proceedings with respect to his assets or has made an affirmation in lieu of an oath (*eidesstattliche Versicherung*) under section 807 of the German Code of Civil Procedure (*Zivilprozessordnung*), or insolvency proceedings with respect to the Purchaser's assets have been opened or the opening has been rejected for lack of assets.
3. Any other rights of withdrawal (*Rücktrittsrechte*) shall remain unaffected from the above.

### VI. Terms and Conditions of Supply; Delay

1. If no fixed date of supply has been agreed, the goods shall be supplied within six weeks from the written confirmation of the order pursuant to item II. 1. above. To the extent that the Purchaser is obliged to cooperate, this term shall not start to run until the Purchaser has complied with the obligation.
2. To the extent that the Purchaser's rights are subject to the expiration of a reasonable extension granted to us by the Purchaser, this extension shall last not less than two weeks.
3. In case the supply is temporarily delayed due to force majeure or other events that were unforeseeable at the time of the conclusion of the contract (operational breakdowns of all kinds, shortages of materials, war, lawful strikes etc.) and that we are not liable for and which we could not prevent despite the care required according to the circumstances of the individual case, regardless of whether they have occurred to us or a contractor or subcontractor (*Selbstlieferungsvorbehalt*), the supply date shall be deemed postponed accordingly. If the supply date is postponed that way by more than four months both parties shall be entitled to withdraw from the contract. If, in consequence of the named circumstances the delivery becomes impossible or unreasonable, without us being liable for it, we are entitled to withdraw from the contract in part or in whole with regard to the non-completed part. The Purchaser shall have no claims for compensation against us in this case. Any other rights of withdrawal shall remain unaffected from the aforesaid.
4. Partial supplies and performances shall be deemed allowed if and to the extent that we have a legitimate interest therein and they are acceptable for the Purchaser.

### VII. Dispatch

Unless otherwise agreed the supply shall be effected „ex works“.

### VIII. Retention of Title

1. We retain title to all goods delivered by us until performance of any of our receivables accrued from the business relationship with the Purchaser, even though the relevant goods have been paid. This shall also apply to a balance (*Saldo*) in favour of us in case certain or all receivables have been contributed to a current account (*Kontokorrent*) by us.
2. In case the retained goods (*Vorbehaltsware*) are subject to composition (*Verbindung*), mixture (*Vermischung/Vermengung*) or procession/transformation (*Verarbeitung/Umbildung*) we shall directly acquire (co-) property (*(Mit-)Eigentum*) of the new things. The new things shall be deemed retained goods. The Purchaser shall store (*verwahren*) the (co-)property to the new things on our behalf without compensation.
3. The Purchaser shall be entitled to release or resell (*weiterveräußern*) the retained goods in the ordinary course of business (*gewöhnlicher Geschäftsgang*). Other dispositions on the retained goods, in particular pledges or the granting of pledged property (*Einräumung von Sicherungseigentum*) shall not be allowed to the Purchaser. In case the third party Purchaser does not pay the retained goods immediately, the Purchaser on his part shall be obliged to dispose the retained goods only subject to retention of title (*Eigentumsvorbehalt*). The entitlement to resell or release shall not apply in case the Purchaser suspends payment or defaults in payment to us.

4. The Purchaser herewith already transfers by way of security all receivables accruing from or in connection with the release or resale (*Weiterveräußerung*) of retained goods against the lessee, the ultimate buyer (*Endabnehmer*) or any other third party, including all securities or all ancillary rights to the securities. In case of contribution into a current account this security transfer shall apply to the closing balance (*Endsaldo*). In case of a resale of retained goods together with other goods the receivable against the third party recipient shall be deemed to be transferred in the amount agreed upon as supply price between us and the Purchaser unless the specific amounts relating to the specific goods delivered by us are not ascertainable from the relevant invoice. In case of the resale of co-ownership-shares (*Miteigentumsanteilen*) as retained goods the receivable accruing from the resale in the amount of our co-ownership-share shall be deemed to be assigned in the amount of our co-ownership-share. We accept this assignment. The Purchaser shall not be entitled to enter into an agreement with third parties excluding or prejudicing our rights in any way or frustrating the transfer in advance (*Vorausabtretung*) of our receivable.
5. The Purchaser shall be entitled to collect any receivables accruing from the release or resale until revocation by us. Upon our request, the Purchaser shall be obliged to notify the lessee or the ultimate buyer about the transfer in advance and to make any information or documents required for the collecting of the receivables available to us. In case the Purchaser defaults in payment we ourselves shall also be entitled to provide such information to the lessee or ultimate buyer.
6. The Purchaser shall be obliged to insure the retained goods in a sufficient way, in particular against fire and burglary. The Purchaser herewith already transfers any receivable against the relevant insurance company accruing from any event of damage or loss relating to the retained goods in an amount corresponding to the value of the relevant retained goods. The Purchaser shall be obliged to notify us immediately about any event of damage or loss of the retained goods and to inform us about name, address and number of the relevant insurance.
7. The Purchaser shall be obliged to immediately notify us about any measures of enforcement (*Zwangsvollstreckungsmaßnahmen*) into the retained goods, into the receivables transferred to us or into any other securities, and to simultaneously provide us with the documents required for an intervention or objection. This shall also apply to any other prejudices. Notwithstanding the aforesaid provision the Purchaser shall be obliged to inform third parties in advance about the rights relating to the retained goods. The costs of an intervention or objection shall be borne by the Purchaser unless the relevant third party is able to compensate such costs.
8. In case we are entitled to claim restitution (*Herausgabe*) of the retained goods, the Purchaser shall bear the costs for restitution. The Purchaser herewith entitles us to commercialise restituted goods freehand at the best or, respectively, in case a commercialisation is not possible in an appropriate term, to scrap (*verschrotten*) the retained goods and to deduct the revenue less any costs accrued to his payables (*Verbindlichkeiten*) against us.
9. In case the value of the retained goods exceeds our receivables against the Purchaser by more than 20% we shall be obliged to release (*freigeben*) securities of our own choice in a corresponding amount upon request of the Purchaser.

### IX. Material defects

1. We shall warrant (*gewährleisten*) that the goods supplied by us have been properly manufactured in accordance with the agreed technical delivery instructions. In case we are obliged to supply pursuant to drawings, specifications, samples etc. provided by the other party to the contract the latter shall bear the risk of suitability for the intended use.
2. Neither any material defects resulting from improper or inappropriate use, from incorrect assembly or commissioning, respectively, carried out by the other party to the contract or by third parties, from usual wear and tear, or from inaccurate or inattentive handling, nor any consequences of improper repair works and of improper and unauthorised modifications carried out by the other party to the contract or by third parties shall be covered by the warranty (*Gewährleistung*).
3. The warranty term (*Gewährleistungsfrist*) shall be one year beginning with the delivery of the goods. The statutory warranty terms in cases of fraudulent concealment (*arglistiges Verschweigen*) as well as in cases of recourse of the supplier (*Lieferantenregress*) pursuant to sections 478, 479 of the German Civil Code shall remain unaffected from the aforesaid. To damage claims due to material defect items X. and XI. shall apply.
4. The Purchaser shall be obliged to inspect (*prüfen*) the goods immediately upon receipt. The Purchaser shall be obliged to notify us about any obvious defects – including any deviations from an agreed quality – immediately and within one week from delivery of the goods at the latest, about any hidden defects immediately upon their discovery and within the warranty term set out in item IX. 3 at the latest. In case the Purchaser breaches his obligation to notify us in due time and form, the goods shall be deemed authorised (*genehmigt*) unless we have concealed the defect fraudulently.
5. In case we cure the performance (*Nacherfüllung*) we reserve the right to choose between a removal of the defect and a delivery of goods free of defects.
6. Any parts being replaced by us shall become our property.
7. We shall not grant any guarantees (*Garantien*) in the terms of the statutes of law.

### X. Liability

1. Our liability for breach of duty (*Pflichtverletzung*) and tort (*Delikt*) shall be limited to intention (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*). This shall not apply to our liability due to fraudulent concealment of defects, due to harm to life, body or health, due to breach of cardinal obligations (*Kardinalpflichten*) or due to the Product Liability Act (*Produkthaftungsgesetz*). The term cardinal obligation abstractly describes such obligations which must be fulfilled in order for contract to be duly implemented and those obligations which the parties to the contract may generally rely upon being complied with.
2. Notwithstanding the form of responsibility, our liability shall additionally be limited to compensation for foreseeable damages typical for this type of contract. This shall not apply to our liability due to harm to life, body or health or due to the Product Liability Act.
3. Any limitations of our liability shall similarly apply to breaches of obligations by our vicarious agents (*Erfüllungsgehilfen*).
4. The personal liability of our legal representatives, vicarious agents and employees for damages caused by them shall be limited in the same manner.

### XI. Limitation Period

Damage claims of the Purchaser shall become time-barred after one year. The beginning of the limitation period shall be subject to section 199 of the German Civil Code; in case of damage claims due to material defect the limitation period shall begin on delivery of the goods. This shortening of the limitation period (*Verjährungserleichterung*) shall not apply to our liability due to fraudulent concealment of defects, due to harm to life, body or health, due to intention (*Vorsatz*) or gross negligence or due to the Product Liability Act.

### XII. Sale and Supply by Third Parties

We reserve the right to have our obligations to supply goods or perform otherwise be carried out by third parties. The rights of the Purchaser shall remain unaffected by this reservation.

### XIII. Form of notifications

Any legally relevant notifications and declarations to be given by the Purchaser to us or a third party shall be valid in writing only.

### XIV. Place of Performance, Place of Jurisdiction, Applicable Law

1. Unless otherwise provided for in the supply contract, our business seat shall be place of performance and payment.
2. Exclusive place of jurisdiction (*ausschließlicher Gerichtsstand*) for all law suits shall be Krefeld, provided that the Purchaser is merchant or a legal person under public law or that he has no place of general jurisdiction in Germany . However, we reserve the right to sue the Purchaser at his ordinary place of jurisdiction (*allgemeiner Gerichtsstand*).
3. All legal relationships between the Purchaser and us are exclusively subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Status: January 2014