

# **SEDOTEC GmbH & Co's General Terms and Conditions of Sale**

## **1. General - Scope of Application**

1.1 The goods and services we supply are supplied exclusively on the basis of our General Terms and Conditions of Sale set out below. We do not acknowledge any conflicting terms and conditions of the buyer which conflict with or deviate from our General Terms and Conditions of Sale unless we have expressly consented in writing to their application. Our General Terms and Conditions of Sale also apply if we supply goods or services without reservation while being aware of terms and conditions of the buyer, which are contrary to, or deviate from, our Terms and Conditions of Sale.

1.2 In ongoing business relations our General Terms and Conditions of Sale also apply to all future transactions with the buyer.

1.3 All agreements entered into between us and the buyer for the purpose of implementing this contract are laid down in writing in this contract.

1.4 The "buyer" for the purposes of these General Terms and Conditions of Sale is also the "customer" or "client" in the case of contracts for work and services (Werkverträge).

1.5 Our General Terms and Conditions of Sale apply only in relation to undertakings (Unternehmer) within the meaning of Paragraphs 310(1) and 14 German Civil Code (BGB).

## **2. Offers - Offer Documents**

2.1 Unless otherwise agreed in writing, our offers are subject to confirmation.

2.2 We reserve title to and the copyrights in all pictures, drawings, calculations, and other documents. This also applies to such written documents as are designated as "confidential". The buyer shall require our express written consent before passing them on to third parties.

## **3. Prices**

3.1 Unless we have agreed otherwise, prices in the case of a supply of goods are stated "ex works" (Incoterms 2010) not including freight and packaging costs and value added tax (Mehrwertsteuer), each in euros. The deduction of any cash discount shall require a special written agreement.

3.2 In the case of contracts where a period of more than 4 months has been agreed as the delivery period or the period for supplying the service we reserve the right to increase the prices in accordance with the change in costs that have occurred following that point in time, particularly due to collective wage agreements or changes in the cost of materials of our sub-suppliers. We are obliged to proceed in the same way in the event of any reductions in cost. We shall notify the buyer of any such change in price at least four weeks in advance in writing. In that case the buyer shall have a right of rescission for the time when the change in price takes effect.

## **4. Payment - Set Off**

4.1 Unless otherwise agreed in writing, the purchase price or the remuneration shall be payable immediately after the goods or services have been supplied without any cash discount and must be paid in such a manner that we have the sum at our disposal on the due date. The charges for the payment transaction shall be borne by the buyer.

4.2 The buyer shall be entitled to rights of retention or rights of set off only insofar as the buyer's counterclaims are undisputed, have become final and absolute or have been acknowledged by us. Furthermore, the buyer shall be entitled to exercise its right of retention only insofar as its counterclaim is based on the same contractual relationship.

4.3 If the buyer is in delay with payment we shall be entitled to demand default interest at a rate of 8 percentage points above the published base interest rate as applicable from time to time (cf. Paragraph 247 German Civil Code (BGB)).

4.4 Any discount that has been agreed shall always only relate to the invoice value exclusive of value added tax (Umsatzsteuer) and is subject to the full settlement of all due claims which we have against the buyer at the time of the discount.

## **5. Proviso of Self-Delivery - Performance of the Deliveries**

### **Delivery Periods and Delivery Dates - Force Majeure - Late Performance (Verzug)**

5.1 Our obligation to deliver is subject to us being supplied ourselves correctly and in time providing we have concluded a congruent hedging transaction for the fulfilment of our obligation to deliver and we are not responsible for our own incorrect or delayed supply.

5.2 The times we have stated for the supply of goods or services are, as a matter of principle, not fixed dates (Paragraph 323(2) no. 2 German Civil Code (BGB), Paragraph 376 German Commercial Code (HGB). Periods of time and deadlines only apply subject to the proviso that all technical issues have been clarified in time and all of the buyer's obligations have been fulfilled in time and properly. The right to raise the objection of non-performance of the contract (Einrede des nicht erfüllten Vertrages) is reserved.

5.3 Incidents of force majeure, i.e. events, over which we have no control and for which we are not responsible, entitle us to postpone the supply of the goods or services by the duration of the hindrance and a reasonable lead time. This shall also apply if such events occur during a period of delay with performance. It shall thereby be irrelevant whether said circumstances occur at our company, the supply plant or at one of our upstream suppliers. If it is not possible for us to deliver the goods or to provide the service within a reasonable period due to such events the buyer and we shall have the right to rescind the contract or, as the case may be, to rescind such part of the contract as has not yet been performed. There shall be no right to damages because of any such rescission.

5.4 If the buyer is in default of taking delivery or if the buyer intentionally or negligently breaches other duties to cooperate, we shall be entitled to demand compensation for any loss we thereby incur including any additional expenses. Any further-reaching claims or rights are reserved.

## **6. Grades - Dimensions - Weights**

6.1 Unless foreign standards or other values have been agreed in writing, any grades and dimensions are governed by the DIN/EN standards and material specification sheets applicable at the time the contract was concluded.

6.2 Any numbers of units, numbers of bundles and suchlike stated in the delivery note are not binding if the goods are charged by weight. Unless it is customary to weigh the good individually, the total weight of the consignment shall apply. Any variances from the calculated individual weights shall be proportionately allocated thereto.

## **7. Retention of Title**

7.1 All goods supplied shall remain our property (goods subject to a retention of title) until all of the accounts receivable to which we are entitled under the business relationship with the buyer have been settled in full, particularly also any respective account balances (All Moneys Retention of Title - Saldoverbehalt) This shall also apply to accounts receivable which arise in future and conditional accounts receivable, e.g. arising out of bills of exchange, and also if payments are made toward particularly designated accounts receivable. This All Moneys Retention of Title (Saldoverbehalt) shall be finally extinguished once all of the accounts receivable covered by this All Moneys Retention of Title (Saldoverbehalt) and which are still outstanding at the time of payment have been settled.

7.2 Any treatment and processing of the goods under the retention of title shall be undertaken on our behalf as the manufacturer (Hersteller) for the purposes of Paragraph 950 German Civil Code (BGB) without subjecting us to any obligation. The treated and processed goods shall be deemed to be goods under the retention of title for the purposes of Clause 7.1. Where the goods under the retention of title are processed, combined and mixed by the buyer with other goods, we shall have joint title to the new article in the proportion that the invoice value of the goods under the retention of title has to the invoice value of the other goods used. If our title lapses due to combining or mixing, the buyer hereby already assigns to us title to the new stock or goods to the extent of the invoice value of the goods under the retention of title. The buyer shall keep our (joint) property safe on our behalf and shall do so free of charge.

7.3 The buyer is revocably entitled to sell the goods under the retention of title in the ordinary course of business upon its normal terms and conditions of business. It is not entitled to dispose of the reserved goods in any other way.

7.4 The accounts receivable resulting from the resale of the goods under the retention of title or from any other legal ground regarding the goods to which we have (joint) title with all security, which the buyer acquires for the accounts receivable are hereby already assigned to us by way of security in the amount of the invoice value of the goods concerned. They shall serve as security to the same extent as the goods under the retention of title. If the buyer sells the goods under the retention of title

together with other goods that were not sold by us the account receivable arising out of the resale is assigned to us in the proportion that the invoice value of the goods under the retention of title has to the invoice value of the other goods sold. When goods, to which we have a share of joint title pursuant to Clause 0, a part corresponding to our share of the joint title is assigned to us. If the buyer uses the goods under the retention of title for fulfilling a contract for work and services (Werkvertrag) the account receivable arising out of the contract for work and services (Werkvertrag) shall be assigned to us in advance to the same extent.

7.5 The buyer is revocably entitled to collect accounts receivable, which have been assigned to us and which arise out of the resale, in its own name and in the ordinary course of business. Said authorisation to collect accounts receivable shall lapse in the event of our revocation, but at the latest in the event of any default of payment, dishonour of a bill of exchange or petition for the opening of insolvency proceedings. We shall only exercise our right of revocation if it becomes apparent after the contract has been entered into that our payment claim arising out of this or other contracts with the buyer is put at risk by a lack of solvency on the part of the buyer. Upon request by us, the buyer shall be obliged to immediately inform its customers of the assignment to us and to give us the documents required to collect the accounts receivable.

7.6 No assignment of accounts receivable arising out of the resale shall be permitted unless it is an assignment by way of true factoring, of which we have been advised and where the proceeds from the factoring exceeds the value of our secured account receivable. Our account receivable shall fall due immediately when the proceeds from the factoring are credited.

7.7 Goods, which are still subject to a retention of title, may not be pledged, transferred by way of security or otherwise disposed of. The buyer must notify us without undue delay in the event of any attachment or other interference by third parties. The buyer shall bear all of the costs that need to be expended for setting aside the attachment or for the return transportation of the goods under the retention of title to the extent they are not paid by any third parties.

7.8 If the buyer is in default of payment or if it dishonours a bills of exchange when due we shall be entitled to take back the goods under the retention of title and, if necessary, to enter the buyer's business premises for this purpose. The same shall apply if it becomes apparent after the contract has been entered into that our payment claim arising out of this or other contracts with the buyer is put at risk by a lack of solvency on the part of the buyer. Taking back goods does not constitute rescission of the contract. The provisions of the German Insolvency Code (Insolvenzordnung) shall remain unaffected.

7.9 We undertake to release the security, to which we are entitled, upon demand by the buyer to the extent that the realisable value of our security exceeds the accounts receivable to be secured by more than 10%. The choice of security to be released shall be up to us.

## **8. Acceptance Testing**

8.1 If it has been agreed that acceptance testing is to be performed, said acceptance testing must be performed without undue delay following notification of the readiness for acceptance. Unless otherwise agreed the acceptance testing shall be performed at our supply plant or warehouse.

8.2 The personnel costs of the acceptance testing shall be borne by the buyer; the buyer shall be charged the cost of materials/equipment for the acceptance testing in accordance with our price list or the supply plant's or stock-keeper's price list.

## **9. The Passing of Risk - Dispatch - Packaging - Part Deliveries or Part Performances**

9.1 Unless we have agreed otherwise, "ex works" (Incoterms 2010) shall apply to deliveries, also with regard to the passing of risk.

9.2 If we have agreed to dispatch the goods, we shall determine the delivery route and means of delivery as well as the forwarding agent and carrier. In that case the risk shall pass to the buyer when the goods are handed over to a forwarding agent or carrier, however at the latest when leaving the warehouse or the supply plant. We shall obtain insurance only upon instruction by the buyer and at the buyer's cost. The duty and cost of unloading shall be borne by the buyer.

9.3 If dispatch is delayed due to fault on the part of the buyer, the risk shall pass to the buyer as of the time when it was advised that the goods were ready for dispatch.

9.4 Unless otherwise agreed, the goods are delivered loose. If agreed, we deliver packed. We provide packaging, means of protection and/or goods carriers in accordance with our experience and at the buyer's cost. We do not assume the buyer's costs for its own disposal of the packaging.

9.5 We are entitled to make part deliveries or to provide part performances to a reasonable extent.

## **10. Warranty Claims**

10.1 The limitation period for warranty claims is 12 months calculated as of the passing of risk. This does not apply to the extent that Paragraphs 438(1) no. 2 (Buildings and Things for Buildings), 479(1) (Claims asserting a Right Recourse), 634 a (Defects in Construction) and Paragraph 438(3) (Intention to Deceive) German Civil Code (BGB) prescribe longer periods, or for liability for damage arising out of an injury to life, body or health or for liability for damage due to an intentional or grossly negligent breach of duty.

10.2 Warranty claims by the buyer are subject to the condition that the latter has properly complied with the duties it owes under Section 377 German Commercial Code (HGB) to inspect incoming goods and to report any complaints.

10.3 If there is a defect, we shall have the right to provide subsequent performance, by either eliminating the defect or by delivering new goods that are free from defects. In the case of eliminating the defect or a replacement delivery we shall be under a duty to bear all of the expenses required for such supplementary performance (Nacherfüllung), in particular the transport costs, infrastructure costs, labour costs and cost of materials, to the extent that said costs are not increased as a result of the goods having been shipped to somewhere other than the place of performance.

10.4 If the supplementary performance fails twice or is refused the buyer can reduce the purchase price or can rescind the contract after setting a reasonable deadline and such deadline has expired to no avail. If the defect is negligible it shall only be entitled to reduce the price.

10.5 Clause 11 shall apply to claims for damages. Any more far-reaching claims or claims because of a defect in quality (Sachmängel) other than the claims regulated in this clause 10 are excluded.

## **11. General Limitation of Liability**

11.1 We shall be liable in accordance with the statutory provisions if the buyer asserts claims for damages based on intent or gross negligence, including the intent or gross negligence of our representatives and vicarious agents. If we are not accused of intentional breach of contract the liability for damages shall be limited to the foreseeable damage which typically occurs.

11.2 We shall be liable in accordance with the statutory provisions if we intentionally or negligently breach a material contractual obligation; however, in this case also, the liability for damages shall be limited to the foreseeable damage which typically occurs. There is a material contractual obligation if the breach of duty relates to a duty, on the performance of which the buyer relied and was also allowed to rely.

11.3 In all other cases if the buyer has a right to compensation for the damage instead of performance because of a negligent breach of duty, our liability shall be limited to compensation for the foreseeable damage which typically occurs.

11.4 The liability for an intentional or negligent (schuldhaft) injury to life, body or health shall remain unaffected; this shall also apply to the mandatory liability under the German Product Liability Act (Produkthaftungsgesetz).

11.5 Except as otherwise provided above, any further-reaching liability for damages is excluded regardless of the legal nature of the claim asserted. This shall particularly apply to claims for damages arising out of culpa in contrahendo (negligence in the course of negotiating), because of other breaches of duty or because of tortious claims for compensation for damage to property pursuant to Paragraph 823 German Civil Code (BGB). This shall also apply if the buyer instead of claiming compensation for damages demands compensation for expenditure made in vain in lieu of performance.

11.6 Insofar as our liability for damages is excluded or limited, this shall also apply to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

11.7 The above provisions do not entail any change to the burden of proof to the detriment of the buyer.

## **12. Place of Performance - Place of Jurisdiction - Governing Law**

12.1 Unless otherwise agreed, the place of performance for the supply of our goods and services shall be Ladenburg.

12.2 It is agreed that the Amtsgericht [Local Court] or Landgericht [Regional Court] of Mannheim shall have local jurisdiction for all disputes. We shall, however, alternatively be entitled to file a suit at the buyer's registered office (seat).

12.3 The governing law shall exclusively be the law of the Federal Republic of Germany; the provisions on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

12.4 Please be advised that we store and process relevant data pertaining to our buyers within the permitted limits under the German Federal Data Protection Act (Bundesdatenschutzgesetz).

### **13. Miscellaneous**

13.1 If a buyer, who is based outside the Federal Republic of Germany (foreign customers) or its authorised agent collects EU-duty paid goods or transports or dispatches them abroad the buyer must produce to us the export certificate necessary for tax purposes. If said certificate is not produced the buyer must pay the value added tax (Umsatzsteuer) on the invoice amount and statutorily owed by us for said deliveries.

13.2 When EU-duty paid goods are delivered from one EU member state to another EU member state the buyer must notify us - prior to the delivery - of its VAT ID number under which its intra-Community acquisitions are taxed within the EU. Otherwise it must pay us the amount of value added tax (Umsatzsteuer) statutorily owed by us in addition to the agreed purchase price.

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