

Standard Terms and Conditions of Sale of the Company Südmo Components GmbH

§ 1 General Scope of Application

1. Our terms and conditions of sale shall apply exclusively; we reject any conflicting conditions of the Client or any conditions of the Client deviating from our terms and conditions of sale, unless we expressly agree to their application in writing. Our terms and conditions of sale shall also apply if with knowledge of the conflicting conditions of the Client or conditions of the Client deviating from our terms and conditions of sale we carry out the delivery to the Client without reservation.
2. All agreements entered into between ourselves and the Client for the purpose of performing this contract are set out in writing in this contract.
3. Our terms and conditions of sale shall apply with regard to enterprises within the meaning of § 310 (1) German Civil Code [*Bürgerliches Gesetzbuch* (BGB)].
4. Our terms and conditions of sale shall also apply for all future transactions with the Client.

§ 2 Offer

1. The documents belonging to the offer such as illustrations, drawings, information on weights and measures are only approximately authoritative, unless they are expressly designated as binding. We reserve titles and copyrights to estimates of costs, drawings and other documents; these may not be made available to third parties. We are obliged not to make plans designated as confidential by the Client available to third parties without its consent.

§ 3 Scope of the Delivery

1. The scope of the delivery shall be determined by our written acknowledgement of the order. In the event of an offer by us with a temporary binding effect and acceptance within the time specified, the offer is valid, unless an acknowledgement of the order is received in due time. Collateral agreements and amendments require our written confirmation. We reserve the right to carry out changes to the construction or the form of the delivery item, unless the delivery item is fundamentally changed and the change is unacceptable for the Client.

§ 4 Prices – Payment Conditions

1. In the absence of a separate agreement, our prices shall be “ex works”, including loading at the works, however, excluding packaging; this shall be invoiced separately.
2. Statutory VAT is not included in our invoices; it is stated separately in the statutory amount in the invoice on the date of invoicing.
3. The purchase price is payable net (without deductions) within 30 days of the invoice date. In the case of payment within 10 days of the invoice date, a 2% discount is granted.
4. In the case of order values as from 50,000 € net, the following payment method shall apply, unless otherwise agreed: 1/3 down payment upon the receipt of the acknowledgement of the order, 1/3 as soon as the Client has been informed that the main parts are ready for forwarding, the remainder within one further month. The respective partial payments must be made net (without deductions). Payments must be made directly to us or a person authorized to represent us, if this person has obtained the written authority to accept payments.

5. In international transactions the usual payment conditions specified in detail in the respective offer and/or the respective acknowledgement of the order shall apply.
6. If the Client delays in payment, we are entitled to claim default interest at the rate of 8% above the respective basic interest rate. If we are able to furnish documentary proof of a higher damage due to the delay, we are entitled to assert this. The Client is however entitled to furnish documentary proof to us that no damage or significantly less damage has occurred as a consequence of the delay in payment.
7. The withholding of payments or the setting-off of claims on account of any counterclaims of the Client disputed by us is not admissible. Cheques and bills of exchange are only accepted in the case of an express agreement. The payment shall only take place if the payments have been credited to our account. The Client shall bear any expenses for the bill of exchange.

§ 5 Delivery time

1. The period of delivery shall begin at the time of sending the acknowledgement of the order, however not before producing the documents, licences, permits, authorizations, clearances to be obtained by the Client and prior to the receipt of an agreed down payment.
2. The period of delivery shall be observed if the delivery item has left the works up to the time of its expiry or the readiness for forwarding has been notified.
3. The period of delivery is extended appropriately in the event of measures in connection with industrial disputes, in particular strikes and lock-outs, as well as in the event of the occurrence of unforeseen impediments beyond our control if documentary evidence has been furnished that such impediments have a significant influence on the completion or delivery of the delivery item. This shall also apply if the circumstances occur at the place of business of a subcontractor. We shall also not be responsible for the above-mentioned circumstances if they occur during an already existing delay. In important cases, we shall notify the Client as soon as possible of the beginning and end of such impediments.
4. If the Client incurs damage due to a delay that has occurred as a consequence of our own negligence, without prejudice to further claims it is entitled to claim compensation for the default. For each full week of the delay it shall amount to ½%, in total however at most 5% of the value of that part of the overall delivery that was not used in due time or in accordance with the terms of the contract.
5. If the forwarding is delayed at the request of the Client, as from one month after the notification of readiness to forward the goods, it shall be charged for the costs that have accrued during the storage of the goods in our works, however at least ½% of the amount invoiced for each month. However, after setting an appropriate period for compliance to no avail, we are entitled to dispose of the delivery item otherwise and supply the Client within an appropriately extended period.
6. Compliance with the period of delivery shall be a precondition for the performance of the contract by the Client.

§ 6 Passing of the Risk and Acceptance

1. The risk shall pass to the Client at the time of sending the delivery items at the latest, and namely also if partial deliveries are carried out or we have also assumed other services or payments such as e.g. forwarding costs or carriage and assembly. At the request of the Client, we shall insure against theft, damage from breakage, transport, fire and water as well as any other insurable risks at its expense.

2. If the forwarding is delayed due to circumstances for which the Client is responsible, the risk shall pass to the Client from the day of the readiness for forwarding; however, at the request and at the expense of the Client we are entitled to bring about the insurance that the Client demands.
3. Delivered items must be accepted by the Client, even if they show insignificant defects.
4. Partial deliveries are admissible.

§ 7 Retention of Title

1. We reserve the title to the delivery items until such time as all payments based on the contract of delivery have been received.
2. We are entitled to insure the delivery item against theft or damage from breakage, fire, water and any other damage by ourselves at the expense of the Client, unless the Client furnishes documentary evidence that it has taken out insurance itself.
3. The Client may neither pledge the delivery item nor this assign by way of security. In the event of attachments and attachment or seizures or any other orders or decrees by third parties, it must notify us immediately thereof.
4. In the event of conduct by the customer not in conformity with the contract, in particular in the event of a default in payment or the breach of an obligation under item no. 3 of this provision, we are entitled to withdraw from the contract and demand the return of the goods.
5. The business owner is entitled to resell the goods in the ordinary course of business. It hereby assigns to us in advance all claims in the amount stated in the invoice that accrue to it against a third party on account of the resale. We hereby accept the assignment. After the assignment, the business owner is authorized to collect the claim. We reserve the right to collect the claim by ourselves as soon as the business owner fails to meet its payment obligations and defaults in its payment.
6. The handling and processing of the goods by the business owner shall always take place on our behalf and by our order. If the goods are processed with objects not belonging to us, we shall obtain the co-ownership of the new thing in the proportion of the value of the item delivered by us to the other processed items. The same shall apply if the goods are mixed with other objects not belonging to us.

§ 8 Liability for defects

1. Claims of the Client based on defects shall be subject to the requirement that the Client has complied with its duty to examine the goods and make a complaint in respect of any defects immediately on receipt of the goods as provided under § 377 German Civil Code [*Handelsgesetzbuch* (HGB)].
2. If there is a defect in an object of sale, we are entitled to supplementary performance in the form of a remedy of the defect or the supply of a new object free from defects, at our option. In the event of a remedy of the defect, we are obliged to bear all expenses required for the purpose of remedying the defect, in particular costs for transport routes, labour cost and material costs, unless these are increased by the object of sale being introduced to a place other than the place of performance.
3. If the supplementary performance is unsuccessful, the Client is entitled to demand withdrawal from the contract or a reduction in the purchase price, at its option. In the event of a merely minor lack of conformity with the terms of the contract, in particular in the event of merely minor defects, however, the Client has no right to withdraw from the contract, but only a right to reduce the purchase price.
4. We are liable under the statutory provisions insofar as the Client asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents. Unless we are held liable for an intentional breach of contract, the liability for damages is limited to foreseeable damage typically occurring under contracts.
5. We are liable under the statutory provisions insofar as we culpably act in breach of an essential contractual obligation; in this case, the liability for damages is limited to foreseeable damage typically occurring under contracts.
6. If the Client is entitled to a claim for damages instead of the performance, our liability, also within the terms of para. 3, is limited to foreseeable damages typically occurring under contracts.
7. This shall not affect the liability for culpable impairment of life, body or health; this shall also apply for the statutory liability imposed under the Product Liability Act [*Produkthaftungsgesetz*].
8. Unless otherwise provided above, liability is excluded.
9. The limitation period of claims based on defects is 12 months calculated from the time of the passing of the risk.
10. This shall not affect the limitation period in the event of a recourse claim under § 478, 479 BGB; this is 5 years, calculated from the delivery of the defective item.

§ 9 Total Liability

1. A further liability for damages than provided in § 8 is excluded without taking into account the legal nature of the asserted claim. This shall be the case in particular for claims for damages based on *culpa in contrahendo* or any other breach of duty or tort claims for damages under § 823 BGB.
2. If the liability for damages is excluded or limited with regard to us, this also applies with regard to the personal liability for damages of our salaried employees, employees, staff members, representatives and vicarious agents.
3. We assume no liability for damage that has occurred for the following reasons: improper or inappropriate use, defective assembly or putting into operation by the Client or a third party, natural wear and tear, faulty or neglectful treatment, unsuitable equipment, replacement materials, defective building work, chemical, electronic influences, unless these are attributable to our fault, furthermore false information from the Client or its advisors regarding operational and technical requirements as well as the chemical, physical conditions for the deployment of the delivery item.

§ 10 Applicable Law, Place of Jurisdiction, Place of Performance, Severability

1. The terms and conditions of business and the entire legal relations between us shall be governed by the law of the Federal Republic of Germany. The application of the uniform UN-law concerning Contracts on the International Sale of Goods (CISG) shall be excluded.
2. If the Client is a businessman, a legal entity under public law or a special fund under public law, our registered office shall be the place of jurisdiction. We are, however, entitled to bring a legal action against the Client at its place of residence.
3. The place of performance shall be Riesbürg.