

# Terms and Conditions of the ARMASUS GmbH



## § 1 General

The word (a) "*vendor*" designates the ARMASUS GmbH or any of its subsidiaries or affiliates; (b) "*customer*" designates the applicant for a credit account with the vendor in respect of the goods and/or the person to whom the goods are sold and/or the person in whose name an account is maintained by the vendor for the purchase of the goods; (c) "*goods*" designates all products ordered by the customer pursuant to this agreement. The agreement between the vendor and the customer shall be constituted in its entirety by these terms and conditions together with the vendor's quotation and any credit approval and/or guarantee required to be provided by the customer to the vendor. Any invoice evidencing or describing any goods is incorporated into and forms part of the agreement. Where there is more than one customer they shall be jointly and severally liable. This agreement shall take precedence over any other agreements, arrangements or understandings (whether in written or verbal form) and, in particular, any conditions contained in the customer's order which are inconsistent with, qualify or are contrary to this agreement.

Further, if there is any other document or arrangement which conflict with this agreement, this agreement shall prevail. No variation, waiver or cancellation of this agreement will be effective unless such variation, waiver or cancellation is in writing and expressly accepted. The vendor may assign all or any of its rights and obligations under this agreement. The customer may not assign all or any of its rights and obligations under this agreement without the prior written consent of the vendor. This agreement shall be binding to the heirs, successors and assigns of the parties hereto and shall be construed in accordance with and be governed by the laws of the jurisdiction of the vendor's place of business.

## § 1 Validity

- (1) The following terms and conditions are part of the contract. They also apply to future transactions, even if they are not explicitly referred to.
- (2) Contract extensions, additions, etc. are also subject to these terms and conditions, without requiring an explicit reference in each case. If the order is issued by way of derogation from the vendor's terms and conditions, the underlying terms and conditions also apply, even if there is no objection.
- (3) Deviations are only valid if they have been accepted by the vendor in writing. The vendor is entitled to assign the claims resulting from its terms and conditions. The buyer is not entitled to assign its rights resulting from this agreement with the vendor to third parties.
- (4) All statements and agreements as well as subsidiary agreements to the contract, in particular further guarantees and modifications must be in written form to become legally effective.

## § 2 Offer and Order

- (1) The vendor's offers are subject to change. Unless previously withdrawn, the vendor's quotations are open for acceptance within the period stated therein or, when no period is stated, within 30 days of the quotation's date. The vendor reserves the right to refuse any order based on its quotation within 7 days after the receipt of the order.
- (2) An order is accepted only by written confirmation. For the content of the contract only the vendor's order confirmation is decisive.
- (3) Obvious mistakes and errors in quotations, order confirmations and invoices can be corrected by the vendor. Legal action based on incorrect information which is clearly contradicting the vendor's other sales documents will be rejected.
- (4) The customer has no right of cancellation of any order, unless granted by the vendor in writing prior to the customer's placing of an order. If the vendor agrees to alter or cancel the order, the customer has to pay to the vendor any loss, damage and expense incurred in relation to the cancellation of that order.

## § 3 Prices and Terms of Payment

- (1) The prices apply which are valid on the day of delivery. All prices include, unless otherwise agreed, freight, customs duties, import taxes, and cargo insurance plus value-added taxes at the statutory rate.
- (2) Payments are due without deduction within 30 days from the invoice date and have to be postage free and charges paid. For larger orders, the vendor is entitled to negotiate partial payments. From the maturity date the vendor is entitled to charge interest at the respective bank rates for bank overdrafts, but at least at a rate of 8 percentage points above the prevailing base rate. Claims in the event of delayed payment remain unaffected.
- (3) The repayment of payments because of, or compensation with counterclaims are only permitted if the counterclaims are undisputed or determined by declaratory judgment.
- (4) All claims of the vendor - even those from other contracts - will be due immediately in case of delay or default of payment of the customer or when other circumstances become known which lead to significant doubts about the solvency or creditworthiness of the customer. In these cases, the vendor is entitled to conduct outstanding deliveries only against advance payment or security deposit and, if the advance payment or security deposit is not made within two weeks, cancel the contract without a new deadline. Further claims remain unaffected.
- (5) The customer has to comply with the vendor's requirements to secure payments specified by the vendor in the customer's credit approval or as stated by the vendor prior to acceptance of an order or as required by the vendor at any point in time after the acceptance of the order, should the vendor consider such requirements to be reasonable.
- (6) The customer hereby authorises the vendor to:
  - (a) collect commercial credit information about the customer, and if the customer is a company, about its directors and officers, for the purposes related to analysing the credit worthiness of the customer in certain intervals.
  - (b) disclose commercial credit information about the customer, and if the customer is a company, about its director and officers, named to the vendor in an order or a credit application to:
    - (i) a credit agency for the purpose of obtaining and maintaining a credit information file; or
    - (ii) a credit provider other than the vendor or to a credit agency, for the purpose of collecting outstanding amounts owed by the customer to the vendor
- (7) In the event of any default by the customer with respect to payments, the customer irrevocably appoints the vendor its attorney to act in its name and on its behalf. Therefore, the customer grants the vendor the following rights concerning the related purposes:
  - (a) where goods have not been resold, to enter upon any premises and take back any goods into its possession; or
  - (b) where the goods have been resold, to be subrogated to the customer's rights in respect of the goods held by any third party and take them back into its possession. After any actions pursuant to the preceding paragraph the vendor is indemnified and held harmless by the customer.
- (8) In addition to the rights of lien to which the vendor is entitled, the vendor is also entitled to a general lien on any goods which are in the vendor's possession (notwithstanding the fact that those goods might have been partly or wholly paid for) for the accounts receivable for those or any other goods.
- (9) In case of delayed payment an interest at a rate of 8% over the base rate is to be paid. The assertion of further damages caused by the delay is not excluded by this.
- (10) If pending claims against the customer exist from other deliveries/ business deals, the vendor is entitled to charge incoming payments against the oldest outstanding claim (netting).
- (11) In case of exceptional advance performances adequate advance payment can be claimed.
- (12) For export transactions the costs associated with the receipt of payments go at the expense of the customer insofar as they occur in its country

## § 4 Delivery and Transfer of Risk

- (1) Delivery periods begin with the receipt of the vendors order confirmation, but not before the receipt of all required documents by the customer and not before the agreed down payment.

- (2) Delivery will be made on the agreed date, but in case of deliveries with international dimensions exceedances of the usual kind in trade are to be accepted by the customer.
- (3) Delivery dates are only valid if they are expressly confirmed by the vendor. If the contract is in writing, also the confirmation of the delivery date requires the written form.
- (4) If the vendor delays the performance, the customer may exercise its possible rights arising therefrom only if the vendor can be held responsible for the delay. The regulations on the burden of proof remain unaffected.
- (5) Cases of force majeure and other events which cannot be influenced and which make the performance/ delivery difficult or impossible release the vendor from the obligations under the respective contract, yet temporary obstacles only for the duration of the hindrance plus an appropriate start-up period. This also applies to the untimely or incorrect receipt of deliveries from our suppliers. In such cases the vendor will inform the customer as soon as possible about the beginning and the end of such circumstances. As far as the customer cannot be expected to accept the delay, it may, with our approval, cancel the contract by immediate written explanation. Strikes, lockouts, and breakdowns which make the timely delivery impossible are considered in the same way as force majeure.
- (6) If the customer does not comply with its purchase commitment, the vendor is, irrespective of other rights, not bound by the rules regarding self-help sale. Instead, it can sell freely after prior notification of the customer.
- (7) The vendor is entitled to partial delivery to a reasonable extent. Reasonable variations of volumes ordered are permitted.
- (8) Place of delivery for the vendor's deliveries is, in case of work deliveries, the vendor's distribution center or storage facility. Consignment and transportation are always at the customer's own risk. The risk on the goods is transferred from the vendor to the customer as soon as the goods leave the plant. In case of partial deliveries the risk is also transferred as soon as the consignment is handed over to the executing carrier or as soon as it left the place of manufacture for delivery.
- (9) If the delivery of the goods is delayed due to reasons the customer is responsible for the transfer of risk takes place with the notification to the customer about the readiness for dispatch. Storage costs and any damages resulting from acceptance delay (lost profits from other orders) are to be paid by the customer.
- (10) The transportation is always at the risk of the customer, even if, due to special agreements, the goods are delivered with freight paid by the vendor. The ordered goods must be accepted immediately. If the vendor assumes the delivery of the goods, the choice of the means of transport and the route is at the vendor's discretion, unless something else has been agreed. Curbside delivery is free, without unloading and placement.
- (11) Dispatch type and packing are at the vendor's discretion.

## § 5 Retention of Title

- (1) All delivered goods stay the vendor's property until full settlement of all claims arising from the business relationship with the customer (conditional goods). The prolonged and enhanced retention of title is applicable. For current accounts, the retained property counts as security for the vendor's balance claim. This applies as well if payments are made for specifically designated claims. Provided that the vendor entered into contingent liabilities in connection with a delivery (e.g. exchange-check procedures), the retention of title does not expire until after the final termination of all commitments.
- (2) The customer holds conditional goods on trust for the vendor free of charge. The conditional goods ought to be kept separately and conspicuously identified as the vendor's property. The customer treats the conditional goods with all proper care, insures them against all usual risks and ensures that the vendor's interest is noted by the insurer.
- (3) The pledge or assignment as security of conditional goods to third parties is excluded. In case of garnishment or other infringement of the vendor's rights by third parties the customer has to specifically indicate the retention of title and has to expressly inform the vendor.
- (4) If the delivered goods are not connected with real estate, the treatment and processing of conditional goods for the vendor as a manufacturer is carried out according to § 950 German Civil Code (BGB), without binding the vendor. Processed goods are considered conditional goods in terms of this provision. If the conditional goods are processed or connected with other objects by the customer the vendor is entitled to co-ownership of the new thing in proportion of the invoice value of the conditional goods relative to the invoice value of the other used items (including the conditional goods).  
If the vendor's property ceases to exist due to combination or processing in other cases as § 946 German Civil Code (BGB), already now the customer transfers its rightful ownership of the new stock or the new item in proportion to the invoiced value of the conditional goods to the vendor. The hereafter existing rights of co-ownership shall be considered as conditional goods in terms of this section.
- (5) To resale or other disposition of the conditional goods, the customer is only entitled, as long as the resale takes place in the course of its normal course of business, and as long as it is not in default to the vendor. All claims arising from the resale, including any collateral, the customer assigns to the vendor to the amount of the vendor's accounts receivable. In the event that the reserved commodity is sold along with other materials not owned by the vendor, the assignment of the claim from the resale is valid up to the value of the conditional goods.
- (6) The customer is entitled to collect claims from the resale until the vendor's timely revocation. On the vendor's demand the customer is obligated to inform its customers of the assignment made in the vendor's favor and to provide the vendor with the information and documentation necessary for collection. In addition, at the expense of the customer, the vendor is also entitled to disclose the assignment to its customers.
- (7) If the customer defaults on payment or otherwise fails to fulfill its obligations from the retention of title, the vendor can withdraw the goods supplied from the customer. The enforcement of the retention of title is only considered as cancellation of the contract if the vendor expressly confirms this in writing. In case the value of the securities according to the aforementioned regulations exceeds the claims in total by more than 10%, the vendor is, on the customer's request, obliged to release securities of the vendor's choice.

## § 6 Returns and Restocking Fees

- (1) Should the customer wish to return goods to the vendor, the customer is liable to pay a restocking fee, whose amount shall be entirely at the discretion of the vendor unless the amount was agreed in writing by the parties prior to the vendor's acceptance of the order.
- (2) Goods returned shall be subject of a Goods Return Authorisation (GRA) issued by the vendor. Goods to be returned must be labelled with the GRA number on a sticker issued by the vendor. Goods returned without a valid GRA sticker will not be deemed an acceptable return and will be sent back to the customer.
- (3) The issuance of a GRA sticker does not imply that the vendor will accept the returned goods and reimburse the entire sum or partial credit to the customer's account. Credits issued subsequently are only related to the quantity of the goods returned and acknowledged in written form by the vendor as having been received.
- (4) The vendor shall not be liable for return freight, unless agreed in writing prior to the customer's return of goods. The vendor reserves the right to reject returns if not shipped in their original packaging or if the packaging is damaged and makes resale impossible, except where the damage is subject to a defective products claim.

#### § 7 Warranty and Duty of Inspection, Notification, and Rejection

- (1) The period of warranty shall be, unless otherwise stated, a period of 12 months from the date of delivery to the customer. In the event that the customer should resell the goods to another party, the period of warranty remains in effect from the original date of supply to the customer.
- (2) Even if samples had previously been sent the customer is obliged to inspect the delivered goods immediately upon receipt on the completeness and correctness. Delivery shall be deemed approved if a notice of defects is not received in writing or by fax within 48 hours after the receipt of the goods at the destination, or if the lack was not apparent despite a proper investigation, within 48 hours after its discovery (but within the contractually agreed, otherwise within the statutory warranty deed). Otherwise, the assertion of warranty claims is excluded.
- (3) In case the customer gives such notice of defects pursuant to the preceding paragraph, the vendor shall:
  - (a) have the right to examine any of the goods;
  - (b) not be obliged to accept the return of any of the goods by the customer;
  - (c) not be under any obligation to compensate the customer for labour or other expenses incurred by the customer because of removal or replacement of defective goods.
- (4) A deficiency does not exist in the case of industrial standard-deviations of the delivered goods from the order confirmation. For goods that are sold as degraded or used material, warranty claims for defects are excluded.
- (5) Complaints of any kind must be reported immediately in written form.
- (6) In case of justified complaints due to lacks or the absence of a quality of the delivered goods guaranteed by the vendor the vendor is obliged to the choice of remedy by either repair or replacement. Thereby, the vendor bears the costs of the remedial actions, provided that they are not increased because the delivered goods were brought to another place than the place of delivery by the customer. If the supplementary performance fails, the customer can demand an abatement of the purchase price or a rescission of the contract after it has set a reasonable time limit for us of at least six weeks, unless this is superfluous according to the legal requirements.
- (7) Defects in part of the delivered goods do not entitle to reject the entire delivery, unless the partial delivery is of no interest for the customer.
- (8) Warranty claims against the vendor become time-barred not later than two years after the delivery of the goods.  
For cases of warranty claims 10% of the contract value is deferred over two years, to guarantee warranty compliance, so that no specific performance securities are necessary for the customer to protect its rights.  
This does not apply to malice. Furthermore, the legal requirements apply.
- (9) If the final purchaser of the goods in the supply chain is a consumer, the customer is entitled - the further requirements of § 377 German Commercial Code (HGB) provided - to recourse to the legal requirements however, it can assert claims to compensate for damages and to reimburse expenses only according to these terms and conditions.

#### § 8 Liability

- (1) Claims for damages or for compensation by the customer against the vendor are excluded.
- (2) The vendor's liability to the customer in relation to the supply or use of the goods, including defective goods, whether under common law, equity or statute and whether direct or indirect, is limited (to the extent permitted by law and not otherwise expressly provided for herein) to the cost of the replacement of the goods or the supply of equivalent goods (or services) and excludes without exception any liability for any loss of profits, loss of revenue, loss of contracts, loss of production or any special, incidental, consequential or indirect damages.
- (3) Any remedy is only available to the customer if the goods have been stored, maintained, installed, and operated by the customer without damage or misuse and strictly in the manner prescribed by the vendor and in accordance with all applicable regulations and if they have not been repaired or altered without the vendor's express approval.
- (4) In case the goods include other manufacturer's products, any warranty which may be given by the vendor only applies to the extent the vendor receives the benefit of that other manufacturer's warranty.
- (5) To the extent permitted by law and excluding the provisions of this agreement, all implied conditions, warranties, and representations are hereby expressly denied and excluded. The vendor shall not be liable for failure to perform or to complete any of its obligations hereunder due to causes beyond the reasonable control of the vendor.
- (6) This disclaimer does not apply:
  - (a) in cases of either intentionally or negligently caused damage,
  - (b) in cases of slightly negligent breach of substantial contractual obligations, also by legal representatives or agents of the customer, insofar it is only liable for the foreseeable, contract typical, direct average damage according to the type of product,
  - (c) in cases of culpable injury to life, body, or health of the customer,
  - (d) in cases of fraudulently concealed defects and inherited guarantee for the quality of the goods,
  - (e) to claims under the Product Liability Act (Produkthaftungsgesetz).

#### § 9 Place of Performance and Jurisdiction

- (1) Place of performance and jurisdiction for all mutual claims, especially on delivery and payment is the customer's location.
- (2) Only German law is applicable. UN purchasing law is excluded.

#### § 10 Severability

- (1) In case of the invalidity of one or more provisions the validity of the remaining provisions shall remain unaffected.
- (2) Instead of the inoperative provisions it is valid what was intended according to spirit and purpose of the economic clause.

With my signature I certify that I understand and accept these terms and conditions in their entirety.

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Place, Date Name