

I. Scope

1. The following General Terms and Conditions of Delivery apply exclusively to all – including future – deliveries of goods and services (hereinafter referred to together as „Deliveries“) by SIPOS Aktorik GmbH (hereinafter „Supplier“) to Customers within the meaning of Clause I.2., unless otherwise expressly agreed in writing. The Customer's terms and conditions shall not become part of the contract, even where the inclusion of such conditions has not been expressly rejected by the Supplier.
2. These General Terms and Conditions of Delivery only apply to businesspersons acting in their professional or commercial capacity with registered office outside of Germany (hereinafter „Customer“).

II. Conclusion and content of the contract

1. The Supplier's offers are generally non-binding, provided that – unless otherwise indicated in the offer – the Supplier is bound by its offers as regards technical content and prices for a period of 1 month. Contracts only come into effect by way of the Supplier's written order confirmation or upon delivery by the Supplier.
2. Insofar as they are not expressly identified as binding, documents such as illustrations, drawings, weight specifications and measurements, provided by the Supplier in connection with the contract, only represent approximate values and, insofar as it is permitted by law, all liability in connection with such documents is hereby expressly excluded.
3. The Supplier reserves all rights of ownership and copyright over cost estimates, drawings and other documentation which the Supplier makes available to the Customer; such documents shall not be disclosed to third parties without the prior written consent of the Supplier.

III. Price and Payment

1. In the absence of any special agreement, prices are in Euro and apply CPT to the agreed destination pursuant to Incoterms® 2020. Packaging, transport and value added tax at the applicable rate are calculated separately.
2. Where the delivery period is longer than 2 months, the Supplier is entitled to increase the agreed prices accordingly where, following conclusion of the contract, there are major changes in the cost of salaries, materials, energy or raw materials and the Supplier is not responsible for these changes.
3. In the absence of any special agreement, payment shall be made within 30 days of receipt of the invoice, without deduction, into the Supplier's bank account. Payments are only deemed to have been made to the extent that the Supplier has free disposal over them at its bank.
4. Where the parties agree that the Customer must open an irrevocable documentary letter of credit (hereinafter „LC“), the Customer shall ensure that this LC will be opened by a reputable bank acceptable to the Supplier and that it will be subject to the ICC Uniform Customs and Practice for Documentary Credits UCP 600.
5. The Customer is only entitled to withhold payments or to a set-off payments against the Customer's counter-claims insofar as the counter-claims are undisputed or have been upheld by a final court judgement and provided the statutory requirements under Art. 120 et seq. Swiss Code of Obligations have been fulfilled.
6. In the case of delays in payment, the Supplier is entitled – without prejudice to any other rights and claims to which it is entitled – to charge interest at a rate of 10 % p.a. until full and final payment has been made. The Supplier is entitled to assert a claim for a higher level of damages incurred as a result of the delay in payment, subject to provision of the corresponding proof thereof. The Customer is entitled to prove that there has been no loss incurred as a result of the delay in payment or that the loss was lower.

IV. Delivery, Delivery Time

1. Unless otherwise agreed, delivery takes place CPT to the agreed destination pursuant to Incoterms® 2020.
2. Delivery periods or delivery times specified in the order confirmation or otherwise agreed, are approximate and therefore non-binding.
3. The delivery period commences on dispatch of the order confirmation but not before the submission of any documents, permits and clearances necessary for delivery which must be obtained by the Customer and not before the receipt of any agreed down payment or payment security or before confirmation of an agreed LC. The delivery period is complied with where, prior to its expiry, the goods have been handed over to the carrier at the Supplier's plant. Where an acceptance procedure is required, the acceptance date shall – other than in the case of justified refusal of acceptance – determine compliance or, alternatively, the notification of readiness for acceptance.
4. It is not necessary to notify the Customer of successful delivery.
5. Requests made by the Customer for changes shall extend the delivery time until the Supplier has examined their feasibility and, where the Supplier gives its consent, by the period required for implementing the new requirements into production. Where ongoing production is suspended due to the request for changes, the Supplier may bring forward and finish other orders. The Supplier is not obliged to keep production capacity free during the period of the delay.
6. Where dispatch is delayed beyond any agreed delivery period at the Customer's request or as a result of circumstances for which the Supplier cannot be held responsible, the Customer shall be charged for the costs of storage, and in any case a minimum of 0.5 % of the net invoice amount, for each month of storage, as from one month after notification of readiness for dispatch. This shall be without prejudice to the Supplier's additional statutory rights.
7. Compliance with any agreed delivery period requires performance of the Customer's contractual obligations.
8. Partial deliveries are permitted and must be accepted by the Customer.

9. The Supplier is entitled to comply with its contractual obligations even after expiry of any agreed delivery time, provided it has notified the Customer a new delivery date. The Customer is entitled, within a reasonable period, to reject delayed performance of the delivery provided it can show that delayed delivery is of no use to it. The Supplier shall only be liable in accordance with Clause X. for any necessary additional expenditure or other damages incurred by the Customer as a result of late delivery.

V. Right of Retention

1. The Supplier may suspend performance of its contractual obligations, in whole or in part, if after conclusion of the contract it becomes evident that the Customer will not fulfil its contractual obligations, whether in whole or in part. This applies in particular where the Customer fails to comply, fails to comply in full or delays in complying with its payment obligations towards the Supplier or a third party.
2. The Supplier is also under no obligation to continue with the performance where the Customer provides security, as guarantee for the consideration, which can be contested under the applicable insolvency provisions.

VI. Passing of risk, Reservation of delivery by own suppliers

1. The risk of performance shall pass to the Customer on handover to the carrier at the Supplier's plant (= place of delivery). This also applies in the case of partial deliveries. Where an acceptance procedure is required, the acceptance date shall – other than in the case of justified refusal of acceptance – determine the passing of risk or, alternatively, the notification of readiness for acceptance. The Customer is not permitted to refuse acceptance due to minor defects.
2. The Supplier's delivery obligation is subject to the proviso that it receives on-time and correct delivery from its own suppliers unless incorrect or delayed delivery by its own suppliers has been caused by the Supplier, at least as a result of gross negligence. The Supplier shall not be liable for the consequences of late or non-performance or defective performance by its own suppliers in the absence of any gross negligence or intent on the part of the Supplier. In these circumstances, the latter may by declaration release itself from its delivery obligation towards the Customer.

VII. Reservation of Title

1. The Supplier reserves title to the goods until full payment of the purchase price and any ancillary claims. This also applies where individual or all claims by the Supplier have been recorded on a running account and the balance has been drawn and acknowledged.
2. The Customer shall sufficiently insure the goods, at the replacement value, against loss and damage at its own cost. The insurance policy and evidence of payment of the premiums must be submitted to the Supplier on request. The Customer hereby assigns to the Supplier any claims under the insurance policy, subject to the condition subsequent that title passes to the Customer. The Supplier hereby accepts the assignment.
3. Where a third party substantiates or asserts a right to the goods which are subject to retention of title, the Customer shall notify the Supplier of this without delay. The costs arising as a result of any defense against a take hold by a third party of the goods which are subject to retention of title shall be borne by the Customer insofar as they cannot be recovered from the third party.
4. The Customer shall assist the Supplier to the best of its ability in taking any additional measures necessary to protect the Supplier's property in the country where the goods are located. Any additional costs thereby incurred shall be born by the Customer.

VIII. Conformity of the goods, examination and notice of lack of conformity, consequences of delivering non-conforming goods

1. The goods conform with the contract if at the time the risk passes they comply with the product specifications expressly agreed between the parties, or in the absence of agreed specifications, the goods are fit for the purpose usual in the country of the Supplier.
2. The Supplier is not liable for the goods complying with further reaching expectations of the Customer or for their compliance with the legal requirements applicable in the country of the Customer.
3. A customary deviation in quantity of up to 10 % or technical improvement to the goods shall not constitute a lack of conformity with the contract.
4. Guaranteed characteristics are only those which are expressly designated as such by the Supplier.
5. The Customer must examine the goods after delivery as required by law and in so doing check every delivery in every respect for any lack of conformity with the contract.
6. The Customer shall give notice of any lack of conformity with the contract to the Supplier as required by law, and in any event directly in writing and by the quickest possible means by which transmission is guaranteed (e. g. by e-mail). In this regard, the Customer must precisely specify the lack of conformity.
7. Statements by the Supplier on the lack of conformity notified by the Customer serve only to clarify the situation and shall not constitute any acknowledgement that there has been a lack of conformity or that there has been a proper notification of it.
8. In the case of a notification of a lack of conformity which does not comply with these requirements, the Customer may only rely on the remedies to which it is entitled under these provisions if the Supplier positively knew of the facts substantiating the lack of conformity and fraudulently failed to disclose them to the Customer.
9. In the case of a legitimate complaint, the Customer is entitled to repair or, if this is not possible, demand delivery of substitute goods conforming to the contract, both in accordance with the terms of the CISG. The rights to declare a contract avoided, reduce the purchase price and to claim damages for lack of conformities or for failure to remedy those lacks are excluded to the extent permitted by law.
10. Where a guarantee has been given, the Supplier shall be liable for the existence of the guaranteed characteristics of the goods within the scope of the guarantee.

11. Insofar as the lack of conformity arises from an essential third-party product, the Supplier is initially entitled to restrict its liability to the assignment of the rights of recourse to which it is entitled as against the supplier of the third-party product, unless satisfaction by way of the assigned right fails or cannot be obtained for some other reason.
12. The Supplier is not liable for defects caused by the fact that the Customer provided incorrect material specifications or incorrect material or in the case of improper modifications or repair work to the goods carried out by the Customer or a third party without the prior consent of the Supplier.
13. Claims by the Customer for the delivery of goods which do not comply with the contract shall lapse 24 months after passing of the risk pursuant to Clause VI.1 unless the Supplier has fraudulently concealed a lack of conformity or has caused it intentionally or by gross negligence, or the Supplier is liable under a guarantee, or for death, personal injury or damage to health caused by a lack of conformity.

IX. Third Party Claims and Product Liability

1. Without prejudice to further legal requirements, third parties' rights or claims founded on industrial or other intellectual property only constitute a defect in title to the extent that the industrial or intellectual property is registered and made public in the country of the Supplier.
2. In the case of claims by third parties which are brought against the Customer on the grounds of product liability, the Customer can only have recourse to the Supplier where the loss was caused by intentional or grossly negligent conduct on the part of the Supplier. In all other cases, liability on the part of the Supplier is excluded to the extent permitted by law.

X. Damages

1. The Supplier shall be liable, irrespective of the legal basis, for loss incurred by the Customer only where such loss is the result of intentional or grossly negligent conduct on the part of the Supplier. In all other cases, liability on the part of the Supplier is excluded to the extent permitted by law.
2. The Supplier's liability for death, personal injury, damage to health and under guarantee, remains unaffected.
3. Subject to Clause VIII. 13, claims for damages shall lapse 12 months after statutory commencement of the limitation period to the extent permitted by law.
4. Contractual liability for vicarious agents shall be excluded insofar as this is permitted by law. This applies in particular in connection with defects, transportation and delay.

XI. Force Majeure

1. "**Force Majeure**" means the occurrence of an event or circumstance that prevents or impedes the Supplier from performing one or more of its contractual obligations under the contract, if and to the extent that it proves: [a] that such impediment is beyond Supplier's reasonable control; and [b] that the effects of the impediment could not reasonably have been avoided or overcome by the Supplier.
2. In the absence of proof to the contrary, the following events affecting the Supplier shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Clause: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation, riot, rebellion and revolution, act of terrorism or sabotage; (ii) currency and trade restriction, embargo, sanction; (iii) act of authority whether lawful or unlawful including difficulties in obtaining authorisations esp. import or export licences, compliance with any law or governmental order; (iv) plague, epidemic or pandemic, natural disaster or extreme natural event; (v) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vi) problems in the procurement of supplies or energy, transport delays, shortages in staff, energy or raw materials; (vii) general labour disturbance such as boycott, strike and lock-out, occupation of factories and premises.
3. The Supplier successfully invoking this Clause is relieved from its duty to perform its obligations under the contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the Customer. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the Supplier. Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. These remedies also apply where the Force Majeure obstructs sub-suppliers or arise during a pre-existing delay.

XII. Written form, contract language, place of performance, jurisdiction, applicable law

1. Where any provision of these General Terms and Conditions of Delivery are or become invalid, or where the General Terms and Conditions of Delivery contain an omission, this shall not affect the legal validity of the remaining provisions. In place of the invalid provision, a valid provision is deemed to have been agreed which comes closest to the meaning and purpose intended by the parties.
2. Amendments, additions and any agreement to cancel the contract must be in writing in order to be valid. The same applies to other declarations of the contracting partners which are necessary for the substantiation, safeguarding or exercise of their rights, particularly notifications of defects, setting of deadlines or unilateral declarations of contract avoidance. Email is also deemed to constitute the written form. The sender can only invoke notifications which have been received by the recipient. Where a notification, which has been sent by registered post or by way of an international, recognised courier service, is delivered late, it shall be deemed to have been received on the date that it would have been delivered under normal circumstances.
3. Any communication between the parties and any declaration by the parties must be in German or English.
4. Subject to Clause IV.1, the place of performance with regard to all obligations arising under the contractual relationship with the Customer is the Supplier's head office.
5. Any disputes, controversy, or claim arising out of, or in relation to the contractual relationship with the Customer, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The seat of the arbitration shall be Zurich. The arbitral proceedings shall be conducted in English.
6. In addition, the Supplier has a right to sue the Customer before the competent national courts in the country of the Supplier or of the Customer provided the Supplier has not accepted arbitration proceedings pursuant to Clause XII.5 without raising any objection. In this case, jurisdiction under Clause XII.5 shall cease to apply.
7. The legal relationship between the Supplier and the Customer is governed by the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 ("**CISG**"). Outside the application of the CISG, the contractual relationship is governed by Swiss Law, namely by the OR (Swiss Law of Obligations).