

General Business Terms and Conditions

General Business Terms and Conditions for legal transactions of SINGLE USE SUPPORT GmbH

1. Scope

1.1. These General Business Terms and Conditions (hereinafter referred to as “Terms”) shall apply exclusively to any and all present and future legal transactions between Single Use Support GmbH (hereinafter referred to as “Seller”) and business enterprises (hereinafter referred to as “Buyer”) wherever they are based.

1.2. As such these Terms are considered definitive and binding for any and all legal transactions of the Seller. They apply as basic condition for future orders regardless of further notice. The version applicable at the time of conclusion of a contract shall be relevant.

1.3. Any deviation from these Terms mentioned above shall be valid only if expressly accepted in writing by the Seller.

1.4. Terms and conditions of the Buyer that are contrary or supplementary are hereby expressly excluded.

1.5. The Seller is entitled to unilaterally modify and complete these Terms at any time without actively notifying the Buyer.

2. Seller’s offer / Conclusion of contract

2.1. Seller’s offers regarding its products and/or services (hereinafter referred to as “services”) are in principle subject to change and without any obligation unless the offer does not contain an explicit binding period. Seller can revoke them at any time without stating reasons.

2.2. Particulars appearing in catalogues, folders etc. as well as any oral or written statements shall only be binding if Seller makes express reference to them in the confirmation of the order.

2.3. The contract shall be deemed concluded upon written confirmation by Seller of an order received or upon commencement of performance.

2.4. Once the Buyer has placed the order, there is no way of cancellation unless the Seller consents in writing. Orders in process cannot be changed unless the Seller consents in writing.

3. Price and Payment Conditions

3.1. Prices specified by the Seller in his offers are without obligation until conclusion of the contract by the Seller (acc. to Art 2.3.). Prices are based on costs at the time of the first quotation.

3.2. Prices are quoted ex works (INCOTERMS 2010) or ex Seller’s warehouse in Austria. According to the present Terms, the prices set in the order and/or in the confirmation do not include value added tax (VAT) as due at the date of delivery, packing, insurance or taxes. Buyers within the European Union (EU) shall be obligated to indicate their VAT identification number.

3.3. Each order is a separate transaction. Offsetting against Seller’s claims is not permitted irrespective of any allocation. Besides Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or other counterclaims.

3.4. Unless otherwise agreed in writing the Buyer has to pay the price within 10 days from the invoice date. The payment shall be in Euros and by bank transfer. Other payment methods must be agreed beforehand by the Seller. Any deductibles and/or special conditions granted occasionally to the Buyer do not constitute a right to renewed granting.

3.5. In addition, the Seller is authorized to charge interest for late payment of at least 10% (ten percent) above the current base rate of the National Bank of Austria (OeNB). Possible higher damages shall be compensated as well.

3.6. In case of cancellation by the Seller due to non-performance of the contract by the Buyer, Seller is entitled to charge a cancellation fee of 20% (twenty percent) plus VAT of the agreed payment.

3.7. If buyer requests a bank guarantee from seller, seller is entitled to charge a 2% service fee based on the defined invoice amount. In general, a bank guarantee can be requested for a down-payment amount only.

4. Substitution

4.1. The Seller shall be entitled to subcontract the order in whole or in part to third parties.

4.2. The payment to said third parties shall be effected exclusively by the Seller. No contractual relationship of any kind shall exist between the Buyer and said third party.

5. Delivery

5.1. Delivery is ex works (INCOTERMS 2010), unless explicitly agreed otherwise. The period for delivery shall commence at the date of order confirmation by the Seller. In this respect, all shipping or delivery dates are approximate only.

5.2. Partial deliveries are permitted and can be invoiced separately. This applies especially if several services (acc. to clause 2.1.) are ordered and not available at the same time.

5.3. If delivery to Buyer is delayed due to any cause within Buyer's control, Seller will place the delayed delivery in storage at Buyer's risk and expense.

5.4. Seller is not liable for any loss or damage resulting from any delay or failure to deliver which is due to any cause beyond Seller's reasonable control. In such cases Seller is authorized to terminate orders or reschedule shipments within a reasonable period of time; Buyer has no right to refuse performance.

5.5. In case of unforeseeable circumstances or circumstances beyond the parties control, such as all cases of force majeure, which hinder compliance with the agreed period of delivery, the latter shall be extended in any case for the duration of such circumstances; delays in transport, damages in transit, energy shortage and raw materials scarcity, labor disputes, and default on performance by a major component supplier who is difficult to replace. The aforesaid circumstances shall also constitute grounds for an extension of the delivery period irrespective of whether they affect Seller or his subcontractor (acc. to clause 4).

5.6. In case a down payment invoice has not been fully paid upon confirmed delivery date, the seller is entitled to withhold the goods until the full down payment amount has been received.

6. Retention of Title

6.1. Seller retains title to all services delivered by him until receipt of the complete payment invoiced including interest and charges.

6.2. All offered objects by Seller are movable objects within the meaning of section 293 Austrian Civil Code (ABGB).

7. Passage of risk and place of performance

7.1. All risks shall pass to Buyer at the time of departure of the products ex works or ex warehouse.

7.2. For services, the place of performance shall be the place at which the service is rendered; the risk in respect of such services or any part thereof that may have been agreed upon shall pass to Buyer at the time the services have been rendered.

8. Warranty

8.1. Seller warrants that his services correspond with the order and is in principle liable for defects within the warranty period (acc. to clause 8.2.).

8.2. Unless special warranty periods operate for individual services the warranty period shall be 12 months. The warranty period runs as of point of passage of risk (acc. to clause 7) (hereinafter referred to as "warranty period").

8.3. The Buyer shall thoroughly inspect any consignment immediately upon delivery to check the services for defects and shall immediately notify the Seller of any defects in the services in writing. Therefore, warranty obligations of the Seller are conditional upon Buyer giving immediate notice in writing of any defects that have occurred. "Immediate" in this context means within 48 hours.

8.4. Upon receipt of such notice (acc. to clause 8.3) Seller has in case of a defect covered by the warranty under clause 8.1. the choice of reparation, replacement or price reduction. At this Buyer has no say.

8.5. Buyer may return at its own expense and risk defective services to Seller. The replacement duty shall be restricted in amount to the value of services.

8.6. The warranty shall lapse immediately if without written consent of Seller, Buyer himself or a third party not expressly authorized undertakes modifications or repairs on any services delivered.

8.7. Seller's warranty extends only to Buyer, there is no possibility for transfer of the warranty to third-parties. The right of recourse to the Seller as defined in Section 933b (1) Austrian Civil Code (ABGB) shall be forfeited one year after delivery. The Buyer shall not be entitled to withhold payments on the ground of complaints. The presumption rule of Section 924 Austrian Civil Code (ABGB) shall be excluded.

8.8. Except for the warranties described in these Terms, Seller disclaims all other warranties whether express or implied, oral or written with respect to the services, including without limitation all implied warranties of merchantability or fitness for any particular purpose. Seller does not warrant that the products are error-free or will accomplish any particular result.

8.9. Contestation of the contract on grounds of error is excluded.

9. Seller's Liability

9.1. Buyer shall be exclusively responsible for the correct choice of service for purposes intended in individual cases. Seller is not liable for any wrong decision by the Buyer.

9.2. Seller disclaims any and all liability for faulty and/or false connections of products and for any use that is non-compliant to applicable law in the country of use.

9.3. Seller shall only be liable in accordance with the legal provisions in the event of gross negligence and in case of intention. Liability for other obligations are not covered.

9.4. Outside the scope of the Austrian Product Liability Act (PHG) Seller shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions.

9.5. Seller shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages resulting from third-party claims against the Buyer.

9.6. Seller shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements.

9.7. For damage which has not occurred to the good itself (profit and other financial damages of the Buyer), Seller shall be liable, irrespective of the legal grounds, only in case of intentional acts or acts of gross negligence and in so far as a liability exists under the Austrian Product Liability Act for personal injury or damage to property for privately used items.

10. Withdrawal from contract

10.1. The Buyer may withdraw from the contract only in the event of delays caused by gross negligence on the part of Seller and only after the expiration of an appropriate grace period. Withdrawal from contract shall be notified in writing by registered mail.

10.2. Irrespective of his other rights the Seller shall be entitled to withdraw from the contract:

10.2.1. if the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reason within the responsibility of Buyer and if the delay is extended beyond a reasonable period of grace allowed;

10.2.2. if doubts have arisen as to Buyer's creditworthiness and if same fails, on Seller's request, to make an advance payment or to provide adequate security prior to delivery.

10.3. If bankruptcy proceedings are instituted against any contracting party or an application for bankruptcy proceedings against that party is not granted for insufficiency of assets, the other party may withdraw from the contract without allowing a period of grace as far as permitted by law.

10.4. Without prejudice to Seller's claim for damages including expenses arising prior to a lawsuit, upon withdrawal from contract any open accounts in respect of deliveries made or services rendered in whole or in part shall be settled according to the contract. This provision also covers deliveries or services not yet accepted by Buyer as well as any preparatory acts performed by Seller. Seller shall, however, have the option alternatively to require the restitution of articles already delivered.

11. Industrial property rights and copyrights

11.1. Buyer shall indemnify the Seller and hold him harmless against any claims for any infringement of industrial property rights raised against him if Seller manufactures an article pursuant to any design data, design drawings, models or other specifications made available to him by the Buyer.

11.2. Design documents such as plans and drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like shall remain the intellectual property of the Seller and are subject to the relevant statutory provisions governing reproduction, imitation etc.

12. General

12.1. All declarations, statements and representations between the parties shall be made in writing in order to be legally effective. The same shall apply to any amendment of this written form requirement.

12.2. Buyer's claims irrespective of their legal basis shall be subject to a limitation period of 12 months. The statutory limitation periods shall apply with respect to intentional behaviour or fraudulent conduct and to any claims under the Austrian Product Liability Act.

13. Severability Clause

Should individually provisions of the contract or of these provisions be invalid the validity of the other provisions shall not be affected. The invalid provision shall be replaced by a valid one, which comes as close to the target goal as possible.

14. Jurisdiction and applicable law

14.1. Any litigations arising under the contract including litigations over the existence or non-existence thereof shall fall within the exclusive jurisdiction of the competent court at Sellers registered business seat.

14.2. The contract is subject to Austrian law excluding the referral rules. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

Version May, 2020