
General Terms & Conditions of SAV GmbH

Last revised: October 2018

1. General and scope of validity

- 1.1. The legal relations between the seller (SAV GmbH) and customer (hereinafter “*Purchaser*”) shall be governed by these General Terms and Conditions (hereinafter “*T&C*”). The T&C apply only to natural persons, legal entities or partnerships with legal capacity, who or which act on conclusion of contract in exercise of their trade, business or profession (entrepreneurs as defined in section 14 (1) of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*)), or to corporate bodies under public law or special funds under public law.
- 1.2. The T&C shall apply most notably to contracts governing the sale and/or delivery of movable items (hereinafter “*Goods*”), irrespective of whether the seller manufactures the Goods itself or purchases them from suppliers (sections 433 and 650 BGB), and to contracts for work and services (section 631 BGB). The T&C shall also apply, as amended, as a framework agreement for future contracts governing the sale and/or delivery of movable items with the same Purchaser, without reference having to be made to them again by the seller in each individual case; in this case the seller shall inform the Purchaser without undue delay of any changes to the T&C. Any such changes shall apply between the seller and the customer if the Purchaser does not object to their validity within one month of receiving the notification of change and the seller duly advises the Purchaser of this consequence of omission of objection in the notification of change.
- 1.3. Any differing, conflicting or supplementary terms of business set out by the Purchaser shall only constitute part of the contract if and insofar as the seller has expressly acknowledged their validity in writing. This acceptance requirement shall also apply if the seller unreservedly carries out the delivery to the Purchaser in full knowledge of conflicting or differing conditions specified by the Purchaser.
- 1.4. Terms of business set out by the Purchaser shall by the way only be applicable in case these do not dissent from the T&C.
- 1.5. Special agreements made with the Purchaser in individual cases (including subsidiary agreements, supplements and amendments) shall take precedence over these T&C in any such event.
- 1.6. Statements and notices of legal relevance which the Purchaser is required to submit to the seller after conclusion of contract (e.g. notice of time limits, notification of defects, notice of withdrawal or reduction) must be issued in writing to be valid (email excluded).
- 1.7. References to the validity of statutory regulations are made for explanatory purposes only. The statutory regulations shall therefore still apply, even without any such explanation, unless they are immediately amended or explicitly excluded in these T&C.

2. Quotations, bidding documents and notice of termination

- 2.1. Quotations issued by the seller shall be subject to confirmation and non-binding. This shall also apply if the seller provides the Purchaser with catalogues, illustrations, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents – including in electronic form – to which the seller reserves title and copyright. The Purchaser must obtain the express consent of the seller before making these items themselves or their content accessible to third parties, disclosing them, using them or allowing third parties to use them, or reproducing them. At the request of the seller, the Purchaser must return these items in full to the latter and destroy any copies which may have been made if they are no longer required by the Purchaser in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.
- 2.2. The purchase order for Goods submitted by the Purchaser shall be considered a binding offer of contract.
- 2.3. Notice of acceptance may be issued either in writing (e.g. by order confirmation) or by delivering the Goods to the Purchaser. A lack of communication in response to a purchase order may not be interpreted as confirmation of acceptance under any circumstances.
- 2.4. The seller shall be entitled to refuse to accept a purchase order from the Purchaser, especially if it becomes apparent that the payment claim of the seller under the individual contract would be jeopardised by the inability of the Purchaser to pay in case of acceptance of the purchase order. This would most notably apply if the creditworthiness of the customer is assessed as “*High Risk*” (credit score of 7 or lower) by Euler Hermes Forderungsmanagement Deutschland GmbH or if there are other pertinent grounds pursuant to section 321 (1) BGB.
- 2.5. The specifications put forward in a purchase order must be checked by the Purchaser for infringement of copyright or violation of other property rights. If the seller should recognise that the specifications of the Purchaser or their implementation infringe third-party property rights, the seller may withdraw from

the order or – in the event of a continuing obligation or contract put into effect – terminate the order without notice.

- 2.6. The seller shall be entitled to terminate the contract without notice if the latter has good cause to do so. Good cause shall most notably apply if it becomes apparent after conclusion of contract that the payment claims of the seller under the contract are placed in jeopardy by the inability of the customer to pay. This shall be without prejudice to statutory rights to refuse performance, terminate the contract and withdraw from the contract on legal grounds.

3. Prices and payment conditions

- 3.1. Unless agreed otherwise in any given case, the prices listed by the seller at the time of conclusion of contract shall be valid and shall apply ex warehouse and inclusive of packaging. The prices are quoted exclusive of statutory value added tax at the prevailing rate.
- 3.2. In case of sale by delivery to a place other than the place of performance (section 5.3 of these T&C), the Purchaser shall also bear the transport or shipping costs ex warehouse and the costs of any cargo insurance requested by the Purchaser. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.
- 3.3. The purchase price shall be due for payment within five days of dispatch of the Goods. The seller shall be entitled to demand a deposit of 1/3 of the purchase price, however, in case of contracts with a delivery value of more than EUR 5,000.00. The deposit shall be due for payment within five days of the invoice date.
- 3.4. The Purchaser shall enter into default of payment after the above term has expired. Interest will be charged on the purchase price during the period of default at the applicable statutory default interest rate but at least nine percentage points above the base rate set by the European Central Bank at the relevant time. This shall be without prejudice to the right of the seller to claim interest from traders and merchants counting from the due date (section 353 of the German Commercial Code (*Handelsgesetzbuch - HGB*)). The seller reserves the right to claim further damages for delay.
- 3.5. The Purchaser shall only have rights of set-off and retention insofar as the latter's claim is established as final and absolute or is undisputed. The opposing rights of the Purchaser, especially pursuant to section 7.6 sentence 2 of these T&C, shall remain unaffected in the event of defects with the delivery.
- 3.6. If it becomes apparent after conclusion of contract that the seller's claim to the purchase price is jeopardised by the inability of the Purchaser to pay (e.g. through the filing of a petition to open insolvency proceedings), the seller shall be entitled to refuse performance and – after setting a time limit, where applicable – to withdraw from the contract (section 321 BGB). In case of contracts where manufacture is unreasonable (custom-made items), the seller may give immediate notice of withdrawal; this shall be without prejudice to the statutory regulations on the dispensability of the setting of a time limit.

4. Delivery deadline and delayed delivery

- 4.1. The delivery period shall be agreed individually or fixed by the seller on acceptance of the order, duly exercising equitable discretion. Where this is not the case, the delivery period shall be eight weeks from conclusion of contract. Deliveries will be made “*ex works*”.
- 4.2. Partial deliveries shall be permitted to such extent as is reasonable. These deliveries will be invoiced separately.
- 4.3. If the seller cannot meet binding delivery deadlines for reasons for which the latter is not responsible (e.g. unavailability of performance, operational disruptions of any kind, impossibility of production of the Goods on the usual machines, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of manpower, lack of energy or raw materials, difficulties in obtaining mandatory official permits, official sanctions, or absent, incorrect or late deliveries by suppliers), the seller will inform the Purchaser of the relevant circumstances without delay and at the same time advise the Purchaser of the expected new delivery time. If the service is not available within the new delivery period either, the seller shall be entitled to withdraw from the contract or part thereof if the latter informs the Purchaser without delay of the non-availability within the new delivery period; the seller will reimburse the Purchaser without delay for any consideration already rendered. A case of non-availability of service in this sense shall most notably be deemed to apply if the seller is not supplied on time by its supplier, if the seller has agreed a matching cover transaction and if neither the seller nor the supplier is at fault or the seller is not under any purchase obligation in an individual case.
- 4.4. The date on which the seller enters into default in delivery shall be dictated by the statutory regulations. In any event, however, the Purchaser shall be required to issue an overdue notice.
- 4.5. Notwithstanding the legal requirements, the Purchaser shall only be entitled to withdraw from the contract if the seller is responsible for the failure to meet the delivery deadline and/or the Purchaser has allowed the seller a reasonable period of grace to no avail.
- 4.6. This shall be without prejudice to the rights of the Purchaser under section 8 of these T&C and the statutory rights of the seller, especially in case of an exclusion of liability (e.g. due to impossibility or unacceptability of performance and/or supplementary performance).

5. Delivery, place of performance, transfer of risk, acceptance, default of acceptance

- 5.1. Deliveries will be made ex works.
- 5.2. The place of performance (*Erfüllungsort*) shall be the registered office of the seller.
- 5.3. The Goods will be shipped to a different destination at the request, cost and risk of the Purchaser (sale by delivery to a place other than the place of performance). Unless agreed otherwise, the seller shall be entitled to decide the mode of dispatch (especially forwarding company, transport route, packaging).
- 5.4. Any tools, moulds, fixture, models, assembly parts and other manufacturing equipment (collectively referred to as "*Tools*") which are to be provided shall be placed at the disposal of the seller at no cost, free of expense charges, in due time and duly exempting the seller from any liability for their deterioration or destruction. Any Tools or Goods which have been paid for and which have not been collected, despite a request for their collection having been issued and a reasonable period of time allowed for their collection by the seller, may be destroyed by the seller for a fee.
- 5.5. If an acceptance procedure is necessary under the relevant statutory provisions, the Purchaser shall be required to inspect and accept the work which has been completed and is ready for acceptance on receipt of a request to this end or a notification of completion by the seller. Should the Purchaser refuse acceptance, the latter must notify the seller of the defects in writing without undue delay but within no more than 14 working days following the provision of the work. If the Purchaser does not refuse acceptance within the aforementioned period, citing at least one defect, the work shall be deemed to have been accepted. This shall also apply when the work is placed into operation or put into service. The Purchaser may not refuse acceptance in case of insignificant defects.
- 5.6. The risk of accidental perishing or accidental deterioration of the Goods shall pass to the Purchaser on the handover of the Goods at the latest. In case of sale by delivery to a place other than the place of performance, however, the risk of accidental perishing or accidental deterioration of the Goods and the risk of delay shall pass on handover of the Goods to the forwarding agent, freight carrier or to the person or body instructed with the dispatch (the start of the loading process shall determine the point of transfer of risk). Insofar as an inspection and acceptance procedure is agreed, this shall be applicable in respect of the passing of risk. The Goods shall be deemed to have been handed over or accepted if the Purchaser fails to take due delivery of said Goods.
- 5.7. If the Purchaser should fall behind with acceptance obligations or neglect other duties of cooperation, or if the delivery of the seller is delayed for other reasons for which the Purchaser is responsible, then the seller shall be entitled to claim compensation for the damages incurred in this respect, including any additional expenses (e.g. storage costs). In this case, the seller will charge a flat rate of compensation of 0.25% of the invoice amount for each full calendar week, beginning on the expiry of the delivery deadline or – in the absence of a delivery deadline – on notification that the Goods are ready for dispatch, but not exceeding 10.00% of the purchase price of the Goods or the remuneration for work. Compensation will not be waived in the event of non-acceptance in the final instance.
- 5.8. This shall be without prejudice to the right of the seller to provide evidence of a higher amount in damages and the statutory claims of the seller (especially reimbursement of additional expenses, appropriate compensation, termination); the lump sum must, however, be set off against further claims for damages or reimbursement of expenses. The Purchaser will be allowed to furnish proof that the seller has sustained no losses at all or substantially fewer losses than the above flat rate of damages (section 5.7).

6. Reservation of title

- 6.1. The seller shall retain title to the Goods until receipt of all current and future claims arising from the purchase contract and/or from an ongoing business relationship with the Purchaser. The Purchaser is revocably entitled to resale the Goods; any claims of the resale of the Goods are hereby assigned to the seller. Any converting or alteration of the Goods subject to reservation of ownership are always made for or on behalf of the seller. Insofar as the Goods subject to reservation of ownership are inextricably connected, mixed or combined with other objects not belonging to the seller, the seller shall acquire a share in ownership of the new item depending on the invoice values of the Goods belonging to the seller in proportion to the other objects connected, mixed or combined at the time of the connection, mixing or combination. Insofar as the objects are connected, mixed or combined in such a way that the item of the Purchaser is to be regarded as the main item, it shall be deemed to have been agreed that the Purchaser transfers the proportional share of ownership to the seller.
- 6.2. The enforcement of the reservation of the title does not require any withdrawal from the contract/purchase agreement except the Purchaser is a customer in the meaning of section 13 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*).
- 6.3. In case the Purchaser acts contrary to contract (*vertragswidrig*), especially in case of non-payment of the due purchase price or in case of unjustified refusal of acceptance the seller is entitled to resign from the contract due to statutory law or due to retention of the title demand redaction (*herauszuverlangen*) of the Goods. The demand of redaction (*Herausgabeverlangen*) of the seller does only constitute a

recession from the contract in case the seller explicitly declares recession in connection together with the demand of redaction (*Herausgabeverlangen*). The seller is in fact entitled to only demand the redaction (*Herausgabeverlangen*) of the Goods and to reserve its right to rescind from the contract. In case the Purchaser does not pay the due purchase price, the Purchaser is only entitled to assert his right in case the seller has granted the Purchaser an adequate time limit (*Frist*) for payment or such adequate time limit (*Frist*) is legally superfluous due to the applicable statutory provisions.

- 6.4. The Purchaser shall be obliged to treat the Goods subject to retention of title with due care and must most notably take out and pay for adequate fire, water and theft insurance covering their replacement value. Any servicing and inspection work which may be required must be carried out by the Purchaser in due time at its own expense.
- 6.5. The Goods subject to reservation of title may not be pledged or assigned to third parties by way of security until such time as the secured debts have been paid in full. The Purchaser must notify the seller in writing of any case of attachment or seizure or other third-party intervention without undue delay.

7. Warranty for defects

- 7.1. Unless specified otherwise below, the statutory provisions shall apply in respect of the rights of the Purchaser in case of material defects and deficiencies in title (including incorrect delivery, short delivery, incorrect assembly or unsatisfactory assembly instructions). In all cases, this shall be without prejudice to the special statutory provisions for final delivery of the Goods to a consumer (recourse of suppliers under sections 445a, 445b, 477 and 478 BGB) except where the right to damages is concerned.
- 7.2. The agreed specification of the properties and condition of the Goods shall be the primary basis of the seller's liability for defects. The product descriptions designated as such (including those of the manufacturer) which have been issued to the Purchaser or included in the contract prior to the purchase order shall be deemed to be an agreement on the quality of the Goods.
- 7.3. If no agreement has been made on the properties and condition, a judgement shall be made according to the statutory ruling as to whether a defect is present or not (section 434 (1) clauses 2 and 3 BGB). The seller will not assume liability, however, for public statements made by the manufacturer or by other third parties (e.g. advertising claims). Nor will the seller accept any liability for defects resulting from inappropriate or improper use, incorrect installation or incorrect start of operation by the Purchaser or third parties, normal wear and tear, mistreatment or negligent handling. Furthermore, the seller shall not be liable for defects resulting from improper modifications or repair work carried out by the Purchaser or third parties without the consent of the seller.
- 7.4. The warranty rights of the Purchaser shall be based on the assumption that the latter has duly discharged its obligation of inspection and immediate notification of defects under sections 377 and 381 HGB. The seller must be notified without delay in writing of any defect which is discovered during the inspection or at a later date. Notification will be deemed to have been issued without delay if submitted within two weeks of the emergence of the defect, where the deadline will be deemed to have been met if the notification is sent in due time. If the Purchaser fails to give notice of defects, the Goods shall be deemed to have been approved. Irrespective of this duty of inspection and immediate notification of defects, the Purchaser must report any obvious defects, i.e. defects visible on due and proper examination (including incorrect and short deliveries), in writing within two weeks of delivery, where the deadline will again be deemed to have been met if the notification is sent in due time. If the Purchaser fails to carry out a due and proper inspection and/or report any defect by the specified deadline, the seller shall not be liable for any defects not reported or not reported in due time. The Goods shall then be deemed to have been approved.
- 7.5. If the delivered item is defective, the seller may choose in the first instance whether to redress the situation by correcting the defect (rectification) or by supplying an item free of defects (replacement). This shall be without prejudice to the statutory right of the seller to refuse supplementary performance.
- 7.6. The seller shall be entitled to make the supplementary performance subject to due payment of the purchase price by the Purchaser. The Purchaser will be entitled, however, to withhold a portion of the purchase price in due proportion to the defect.
- 7.7. The Purchaser shall be required to allow the seller sufficient time and opportunity for supplementary performance, duly providing the rejected Goods for inspection. In case of replacement, the Purchaser shall be required under the statutory provisions to return the defective item to the seller. The supplementary performance shall not include the deinstallation of the defective item or reinstallation if the duties of the seller under the original contract did not include installation, unless the seller is responsible for the defect.
- 7.8. The seller will bear the costs required for inspection and supplementary performance if a defect is indeed found to be present, especially transport costs, travel expenses, labour and materials. Should the request of the Purchaser for remedial action prove to be unjustified, however, the seller may ask to be reimbursed by the Purchaser for the costs incurred as a result. The seller shall only bear the costs of removal and installation if and insofar as the latter is liable for damages for the defect.

- 7.9. In urgent cases, e.g. in order to avert danger to operational safety or to avoid disproportionate damages, the Purchaser will have the right to remedy the defect and to claim compensation from the seller for the expenses required to this end from an objective standpoint. The seller must be notified immediately, in advance where possible, of any such remedial action taken by the Purchaser. The right of the Purchaser to take remedial action shall not apply if the seller would have been entitled to refuse supplementary performance under the statutory provisions.
- 7.10. If the supplementary performance has failed, or if a time limit set for the supplementary performance by the Purchaser has expired to no avail or can be dispensed with under the statutory provisions, then the Purchaser may choose to withdraw from the purchase contract or to ask for an appropriate decrease in the purchase price (reduction). The right of withdrawal shall not apply, however, in case of a minor defect.
- 7.11. The Purchaser may only assert claims for damages or claims for reimbursement of expenses incurred in vain in accordance with section 8 of these T&C and may not make claims in other respects.

8. Liability in other respects

- 8.1. Unless specified otherwise in these T&C, including in the provisions set out below, the seller will be liable in accordance with the relevant statutory regulations for breach of contractual and non-contractual duty.
- 8.2. The seller shall only be liable for damages – irrespective of legal grounds – in case of deliberate intent and gross negligence. The seller shall only be liable for the following damages in case of ordinary negligence:
- 8.2.1. a) damages arising from injury to life, limb or health;
- 8.2.2. b) damages arising from neglect of a fundamental contractual duty (a duty which actually enables due fulfilment of the contract and upon compliance with which the other party may and does routinely rely). In this case, however, the liability of the seller shall be limited to such damages as are reasonably foreseeable or typical under such contracts.
- 8.3. The limitations of liability set out in section 8.2 will not apply insofar as the seller has fraudulently concealed or intentionally caused a defect or has furnished a guarantee for the properties and condition of the Goods, nor will they apply to claims made by the Purchaser under the law on product liability. The Purchaser may only withdraw from or cancel the contract for a breach of duty not involving a defect if the seller is responsible for the breach of duty. The Purchaser shall have no straightforward right of termination (most notably excluded under sections 650 and 648 BGB). The statutory preconditions and legal consequences shall apply in other respects.
- 8.4. The exclusions or limitations of liability on the part of the seller shall also apply to the personal liability of employees, workers, staff members, legal representatives and servants of the seller.
- 8.5. The Purchaser shall bear the full burden of proof for the existence of the defect. Sections 477 and 478 (1) BGB shall remain unaffected in the event of a final sale in the supply chain to a consumer.
- 8.6. The Purchaser shall be obliged – including above and beyond the legal obligations under section 254 BGB – to advise the seller of the risk of an exceptionally high level of damages and to make all reasonable efforts to avert and reduce damages.

9. Property rights

- 9.1. The seller guarantees, in accordance with the terms set out in this section 9, that the Goods are free from third-party industrial property rights or copyrights, unless the Goods were manufactured on the specific instructions of the Purchaser (drawings, designs, plans, etc.). Each contracting party shall notify the other party in writing without undue delay of any claims asserted against it for the infringement of such rights.
- 9.2. In the event that the Goods infringe a third-party industrial property right or copyright, the seller will remedy the situation at its own expense, choosing either to modify or exchange the Goods in such a way that third-party rights are no longer infringed but the Goods continue to fulfil the contractually agreed purposes or to provide the Purchaser with the right of use by concluding a licence agreement. If the seller fails to remedy the situation within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract or to seek an appropriate reduction in the purchase price. Any claims for damages asserted by the Purchaser shall be subject to the restrictions set out in section 7 of these T&C.
- 9.3. If rights are infringed by products made by other manufacturers and supplied by the seller, the seller will assert its claims against the manufacturers and upstream suppliers on behalf of the Purchaser, or the seller may alternatively choose to assign its claims to the Purchaser. In these cases, claims may only be made against the seller in accordance with the terms set out in this section 8 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers has been unsuccessful or has no prospect of success, e.g. due to insolvency. The seller shall only be liable for damages or reimbursement of expenses pursuant to section 8, however, if the seller is also responsible for the defect of title.

10. Confidentiality

- 10.1. Each contracting party shall take due care of all the documents (including samples, models and data) and knowledge obtained in the business relationship, restricting their use to the jointly pursued purposes only and refraining from disclosing them to third parties, duly exercising the same level of care as would apply in respect of their own classified documents and knowledge, if the other contracting party indicates that they are confidential or has an obvious interest in their secrecy.
- 10.2. This obligation shall apply on initial receipt of the documents or knowledge and shall cease to apply 36 months after the end of the business relationship.
- 10.3. The obligation shall not apply to documents and knowledge which are in the public domain or which were already known to the contractual partner on their receipt in the absence of any duty of confidentiality, or which are subsequently transmitted by a third party authorised to pass them on, or which are developed by the receiving contractual partner without exploitation of any confidential documents or knowledge belonging to the other contractual partner.

11. Statute of limitations

- 11.1. By way of derogation from section 438 (1) subs. 3 and section 634a (1) subs. 3 BGB, claims for material defects and deficiencies in title shall be subject to a general limitation period of one year after delivery. The limitation period shall begin from the point of acceptance in cases where an inspection and acceptance procedure is agreed or provided for by law. In the event of claims due to injury to life, limb or health and in cases of deliberate intent and gross negligence, the statutory limitation period shall remain in effect.
- 11.2. If the Goods in question are building structures, or items which have been used for buildings as intended (construction materials), and have caused the building to be defective then the statutory limitation period shall be five years from delivery (section 438 (1) subs. 2 and section 634a (1) subs. 2 BGB). This shall be without prejudice to special statutory provisions in respect of third-party rights in rem (section 438 (1) subs. 1 BGB), in the event of fraudulent intent on the part of the seller (section 438 (3) BGB), and in respect of claims relating to recourse of suppliers in the event of final delivery to a consumer (sections 445b and 478 (2) BGB). Instead of the limitation periods pursuant to section 445b BGB, however, only the limitation period pursuant to section 11.1 above shall apply if the last sale in the supply chain is not a sale of consumer goods.
- 11.3. The above limitation periods shall also apply to claims for contractual and pre-contractual or non-contractual damages asserted by the Purchaser on the basis of a defect with the Goods, unless the routine statutory period of limitation would be shorter in any given case (sections 195 and 199 BGB). This shall in all cases be without prejudice to the limitation periods under the law on product liability. The statutory limitation periods shall apply exclusively to other claims for damages asserted by the Purchaser pursuant to section 8.

12. General provisions

- 12.1. These T&C and the legal relations between the seller and Purchaser shall be governed exclusively by the law of the Federal Republic of Germany, unless agreed otherwise. International uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, shall not apply. The conditions and effects of the retention of title pursuant to section 6 shall be subject to the law in force in the location where the respective item is stored, insofar as the choice in favour of German law is inadmissible or invalid under said law.
- 12.2. The seller is at anytime entitle to assign its rights under or in connection with the business relationship.
- 12.3. The exclusive - and international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall at the sole discretion of the seller either the registered office of the seller or the Purchaser.