

General Terms and Conditions of Business

1. Scope of application

1.1 The Contractor in the sense of these terms and conditions is Condair GmbH and the Client is the respective ordering party/customer.

1.2 The following delivery terms and conditions shall form an integral part of the contract between the Contractor and Client, unless individual agreements to the contrary have been drawn up. They shall apply to all offers, deliveries and services (hereinafter referred to as "Services") and to all future business relationships, even if they are not expressly agreed again. These Delivery Terms and Conditions shall be deemed to have been accepted by the Client at the latest upon acceptance of the Services.

1.3 All agreements, promises and ancillary agreements made by the Contractor's sales personnel shall only be valid if they are confirmed in writing by the Contractor's management or their authorised representatives immediately after the verbal agreement.

1.4 Any conflicting general terms and conditions of business or purchase of the Client shall not apply, even if they have not been expressly contradicted by the Contractor.

2. Offer / order / order confirmation

2.1 Offers of the Contractor shall be non-binding, unless otherwise specified therein. Irrespective of whether the Contractor has submitted an offer, the contract between the Contractor and the Client shall only be concluded upon the Contractor's confirmation of the Client's order. A confirmation of receipt of the Client's order by the Contractor does not constitute an order confirmation.

2.2 Any deviations from the Contractor's offer made by the Client shall be clearly indicated in the order. Deviations from the Client's order in the Contractor's order confirmation shall also be clearly marked. The Contractor and the Client shall agree on any deviations in writing without delay. In the event of a dispute, the Contractor's order confirmation shall be decisive.

3. Drawings, technical documents

3.1 Drawings, illustrations, dimensions, weights or other performance data shall be binding insofar as they are specified in the order confirmation or agreed separately. The Contractor reserves the right to make changes for technical or technical reasons, insofar as these are necessary and reasonable for the Client.

3.2 The intellectual property or existing property rights to calculations, cost estimates, drafts, drawings and other technical documents provided shall remain with the Contractor. These may neither be reproduced nor handed over or disclosed to third parties without the Contractor's prior consent.

4. Prices and payments

4.1 Unless expressly agreed otherwise, the Contractor's prices shall apply ex warehouse Munich plus statutory value added tax and packaging. Postage, freight as well as other shipping charges and transport insurances shall be carried out at the Contractor's expense, insofar as the transport by the Contractor has been commissioned by the Client. Installation, assembly and commissioning — if additionally commissioned — shall be invoiced separately.

4.2 In the event that, at the Client's request, the services are to be provided by the Contractor later than agreed, this can only be done against reimbursement of the costs of any interim storage, whereby payments for the services must be rendered at the originally agreed times.

4.3 Invoices of the Contractor for services are payable net cash within 10 days of the invoice date. If the order value exceeds EUR 15,000.00, the price shall be payable within 3 days as follows: 1/3 of the price after order confirmation, 1/3 of the price immediately after notification of readiness for dispatch, but in any case before dispatch or collection, 1/3 of the price on delivery or acceptance, if assembly has been agreed.

4.4 Payment by bill of exchange or cheque shall only be accepted following prior agreement. Bill of exchange and discount charges shall be borne by the Client.

4.5 Even if notices of defects or counterclaims are asserted, the Client shall only be entitled to set-off, retention or reduction if the counterclaims have been legally established or are undisputed. However, the Client is only entitled to withhold payment on the basis of counterclaims arising from the same contractual relationship.

5. Packaging and transfer of risk

5.1 The Contractor shall ensure proper packaging of the services.

5.2 The risk shall always be transferred upon delivery. This shall also apply in the case of commissioned assembly. If the delivery/assembly is to take place later at the Client's request, the risk shall be transferred on the originally agreed delivery date.

6. Delivery time and compensation for delay

6.1 Delivery dates shall be only be binding if they are expressly marked as binding in writing in the order confirmation. The Contractor may exceed delivery dates not marked as binding by up to three weeks.

6.2 The Contractor shall not be responsible for delays in delivery and performance due to force majeure or events which make delivery significantly more difficult or impossible for the Contractor, not only temporarily. They entitle the Contractor to postpone the delivery or service for the duration of the impediment plus a reasonable start-up time. Furthermore, if the impediment exceeds a period of three months, both the Contractor and the Client may, after setting a reasonable deadline, withdraw from the contract in whole or in part due to the part which has not yet been fulfilled. Other events that delay performance, such as strikes, lock-outs and official orders, even if they occur at the Contractor's suppliers or their sub-suppliers, and exceed a period of three months shall only entitle both the Contractor and the Client to withdraw from the contract after the unsuccessful expiry of a reasonable grace period. If the delivery time is extended for the aforementioned reasons or if the Contractor is released from his obligation, the Client may not derive any claims for damages from this. The Contractor may only invoke the aforementioned circumstances if he notifies the Client and immediately proves the circumstances to the Client.

6.3 The Contractor is entitled to make partial deliveries and render partial services at any time, provided that these are reasonable for the Client.

6.4 6.4 If the Contractor is in default, the Client shall be entitled to a lump-sum compensation for default amounting to 0.5% for each full week of default, but in total not more than 5% of the invoice value of the services affected by the default. Any further claims shall be excluded unless the delay is due to intent or gross negligence on the Contractor's part.

6.5 6.5 In the event of default, the Client shall be entitled to terminate the contract after it has granted the Contractor a reasonable grace period twice and this has not been complied with by the Contractor.

7. Assembly

7.1 If the Contractor is also to carry out the assembly, this must be agreed in writing (order / order confirmation). Unless otherwise agreed in the order confirmation, the following shall normally apply to assembly:

7.1.1 The execution of the assembly requires that the Client has approved the assembly, whereby at the time of the assembly approval all necessary approvals and all on-site prerequisites are available, all technical details have been agreed and the services to be provided by the Client must be available at the assembly site.

7.1.2 A period of at least four weeks must be observed between the assembly approval and its commencement.

7.1.3 At the agreed assembly commencement time, the Client has either made the agreed down payment or provided the agreed guarantee.

7.1.4 Changes in the period between the assembly approval and its commencement shall lead to an extension of the deadline.

7.1.5 The successful completion of the assembly within the agreed period shall be determined either by the time of acceptance or, at the latest, upon commissioning of the delivered and assembled system or plant component.

7.1.6 The deadline for completion of the assembly shall be deemed to have been met if the delivered and assembled system or system components can be commissioned or used within the deadline. The subsequent execution of work of an incidental nature is irrelevant.

7.1.7 If agreed with the Client, the Contractor shall commission the delivered and/or assembled system(s) or system components, whereby all on-site prerequisites and all necessary services to be provided by the Client must also be available for this purpose.

7.1.8 The warranty shall commence upon completion of the assembly.

7.2 The Client shall be obliged to point out existing hazards relating to the assembly (e.g. fire hazards in rooms or of building materials used) and to take the necessary hazard protection measures for the assembly, e.g. provision of fire guards, fire extinguishing material etc. This applies in particular to cutting, welding and soldering work that regularly occurs during assembly. The costs for these measures and any delays caused thereby shall be borne by the Client.

7.3 The Contractor undertakes to notify the Client in writing without delay of any circumstances that prevent him from properly performing his services.

8. Retention of title

8.1 The Contractor shall retain title to the services supplied (hereinafter referred to as “goods subject to retention of title”) until payment in full (in the case of acceptance of bills of exchange and cheques until they have been honoured), until all their claims arising from this business relationship and any future claims — including those arising from contracts concluded at the same time or later — have been settled.

8.2 The Client is entitled to sell the goods subject to retention of title in the course of ordinary business operations. In this case, the Client already assigns now all claims with all ancillary rights that accrue to him from the resale against buyers or against third parties. The Contractor undertakes not to collect the claims as long as the Client duly fulfils his payment obligations. In the event of default in payment, the Contractor may demand that the Client informs him of the assigned claims and their debtors, provides all information necessary for collection and hands over the relevant documents. In this case, the Contractor shall be obliged to inform the debtor of the assignment.

8.3 In the event of a breach of key contractual obligations, in particular in the event of default in payment, the Contractor shall be entitled to take back the goods that are subject to retention of title. The Contractor's repossession and seizure of the goods subject to retention of title shall only constitute a withdrawal if the Contractor expressly declares this in writing. If the goods subject to retention of title are taken back without a declaration of withdrawal, the Client shall already allow the Contractor to enter its business premises during normal business hours and repossess the goods subject to retention of title now. In the event of seizures or other interventions by third parties, the Client shall immediately notify the Contractor in writing, sending a seizure report as well as an affidavit on the identity of the seized item.

8.4 If the goods subject to retention of title are installed as essential components in a third party property by the Client or on his behalf, the Client already assigns his claims against the third party or the party in question for remuneration in the amount of the invoice or invoice value of the transaction between the Contractor and Client now. This assignment shall include all ancillary rights including the granting of a security mortgage to the Client. The Contractor shall accept this assignment.

8.5 If the retention of title expires due to combination or processing, the Contractor shall acquire co-ownership in proportion to the invoice value of the transaction between the Contractor and the Client to the value of the finished product. Should the newly created item be resold, up to the value of the services the Client shall assign to the Contractor all claims accruing to it from the resale against the purchaser or against third parties. The Contractor shall accept this assignment.

8.6 Until the fulfilment of all claims, including all balance claims from the current account, to which the Contractor is currently or shall in the future be entitled against the Client for any legal reason, the Contractor shall be granted securities to be agreed upon, which he shall release upon request at his discretion, insofar as their value sustainably exceeds the claims by over 20%.

8.7 The Contractor expressly reserves the right to further claims, in particular due to default in payment.

8.8 Insofar as the goods subject to retention of title have become an integral part of the final purchaser's property, the Contractor shall be entitled, in the event of non-compliance with the agreed payment deadlines, to dismantle the goods subject to retention of title which are to be dismantled without significant impairment of the building structure. The Client already undertakes to permit the dismantling and to re-transfer to the Contractor the ownership of the dismantled goods subject to retention of title. In the event of impairment of these rights of the Contractor, the Client shall be obliged to compensate the Contractor for damages. Dismantling and all other costs shall be borne by the Client.

8.9 In the event that a bill of exchange liability of the Contractor is established in connection with the payment of the purchase price by the Client, the reservation of title as well as the claim from services on which it is based shall not expire before the bill of exchange has been honoured by the Client as drawee.

9. Goods return

9.1 Services which are not produced in accordance with the contract (hereinafter referred to as “standard goods”) shall be taken back against a cancellation fee of EUR 50.00, unless they have already been delivered. If the standard goods have already been delivered, a separate agreement between the Client and the Contractor is required for the return. As a lump-sum compensation for the return, 15% of the value of the services as well as a cancellation fee amounting to EUR 50.00 shall be due. In addition, the Client shall also bear the transport costs (outward and return freight).

9.2 Specific services (specific order goods) shall not be returned, nor can they be cancelled.

9.3 In the event of a withdrawal of the services, a refund is excluded. Instead, a credit note will be issued or compensation against further orders allowed. Client debit notes shall not be recognised.

10. Warranty

10.1 The time of delivery or acceptance, if assembly has also been commissioned, shall be decisive for the contractual condition of the services. The delivered services are to be inspected immediately upon receipt. Notification of defects must be provided immediately and must be received by the Contractor in writing within two weeks of delivery at the latest. This applies in particular to defects in the external condition and regarding the completeness of the delivery. The Client must complain about transport damage to the carrier immediately after receipt of the delivery and have it certified on the consignment note with simultaneous registration of claims for damages.

10.2 Other defects which are not immediately detected even after careful inspection must be reported in writing immediately, at the latest after discovery of the defect.

10.3 The Client’s right to assert claims arising from defects shall become time-barred in all cases six months after the time of the timely complaint, but at the earliest upon expiry of the warranty period. Only the Client is entitled to these claims and they are not assignable.

10.4 The warranty period shall commence upon delivery or acceptance, if assembly has also been commissioned. Rectification and replacement delivery shall not suspend expiry of the warranty period.

10.5 The warranty period shall be determined in accordance with the provisions in the order confirmation; otherwise the warranty period shall be 2 years.

10.6 The Contractor's warranty obligation is subject to the condition that the delivered services are properly assembled by a recognised specialist company — taking into account the relevant standards and recognised rules of technology — and are used in exact compliance with the Contractor's specifications/instructions (such as operating instructions, technical documentation, etc.). The warranty period shall expire if the defect that has occurred is causally related to the improper modification, processing or other treatment. Liability is excluded for damage resulting from use-related wear and tear, natural wear and tear of parts subject to wear and tear, excessive stress, inadequate maintenance, violent damage, non-compliance with the Contractor's product documentation, incorrect use or incorrect operation, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrotechnical or electrical influences.

10.7 The Contractor's warranty obligation shall further require that the Client specifies in writing any defect that has arisen in sufficient detail and sets a reasonable deadline for the Contractor to carry out the rectification or replacement delivery. The Contractor must be given the opportunity to examine the defect itself or through a representative. In urgent cases of danger to operational safety, of which the Contractor must be informed immediately, the Client and the Contractor shall immediately agree on and coordinate the necessary measures.

10.8 If the Contractor is in default with the rectification of a notified defect, the Client shall have the right to rectify the defect itself at cost or to have it rectified by third parties, in which case the Contractor shall reimburse the necessary costs.

10.9.1 The warranty assumed by the Contractor shall extend to those parts which have demonstrably become defective as a result of material or manufacturing faults and is limited to rectification, replacement delivery including assumption of the necessary transport costs to the original place of delivery but excluding installation and removal costs as well as operating materials such as oil and refrigerants. The Contractor has the right to demand the return of the defective parts.

10.9.2 For the performance of all rectifications deemed necessary by the Contractor at its discretion, the Client shall provide the necessary time and opportunity, enable the necessary accessibility and also provide auxiliary personnel at the Contractor's request.

10.10 If the rectification / subsequent delivery is impossible or would require a disproportionately high effort, or if the defect has not been rectified after two attempts at rectification or after two substitute deliveries and after the expiry of the reasonable period of grace set by the Client, the Client may claim a reduction in price or withdraw from the contract.

10.11 Liability for damage that has not occurred to the delivery item itself shall be excluded. This also applies to consequential damages of any kind, provided that the Contractor has not committed intent or gross negligence, or the warranted characteristics are intended to prevent the risk of consequential damages. This exclusion of liability does not apply in cases in which the Contractor is liable under the Product Liability Act.

11. Place of jurisdiction, applicable law, severability clause

11.1 Munich is agreed as the exclusive place of jurisdiction for all disputes between the Contractor and Client. This shall also apply if the Client has no general place of jurisdiction in Germany.

11.2 The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall not apply.

11.3 Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions. Instead, the Contractor and the Client shall agree on a legally admissible provision.

Deutschland

Condair GmbH

Zweigniederlassung Garching

Parkring 3

DE-85748 Garching

Deutschland

Phone: +49 89 20 70 08-0