

# General Terms and Conditions of Delivery (CTCD)

## of AFRISO-EURO-INDEX GmbH · Lindenstraße 20 · 74363 Güglingen

### § 1 Validity

- (1) All our business relations with our contractual partners (hereinafter referred to as "Customers") are exclusively based on these General Terms and Conditions of Delivery (GTCD), if the customer is a business person (§ 14 BGB, German Civil Code), a legal entity under public law or a special fund under public law. They shall also apply to all future business relations between us and our customers as an outline agreement, even if they are not separately agreed again.
- (2) General terms and conditions of the customer shall only become part of the contract if we expressly consent to their validity in writing. This consent requirement shall apply in any and all cases, even if, for example, we carry out deliveries to the customer without expressly rejecting the customer's general terms and conditions even though we are aware of such terms and conditions.
- (3) Legally relevant declarations and notifications by the customer in relation to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing (e.g. letter, e-mail, fax).  
Statutory formal requirements and other evidence, especially in the event of doubts about the legitimacy of the declaring party, shall remain unaffected.
- (3) Invoices shall be payable within 30 days from the invoice date without any deduction, unless otherwise agreed in writing (e.g. e-mail). The date of unconditional credit on our business account shall be decisive for payment in due time. Payment by check shall be excluded.
- (4) Any set-off with counterclaims of the customer shall only be permissible if and to the extent that such counterclaims are undisputed or asserted by a court. The customer shall only be entitled to a right of retention if it is based on the same contractual relationship.
- (5) We shall be entitled to deliver or provide outstanding deliveries or services only after advance payment or provision of security if, after the conclusion of the contract, we become aware of circumstances which substantially reduce the creditworthiness of the customer and which jeopardise the payment of our outstanding claims arising from the contract through the customer, including claims from other individual contracts pursuant to the same outline agreement.

### § 2 Offer and conclusion of contract

- (1) All our offers are free and non-binding, unless they are expressly marked as binding or contain a certain acceptance period.  
We shall have the right to accept orders within a period of fourteen days after receipt.
- (2) The legal relationship between us and the customer shall be governed solely by the written purchase agreement (e.g. e-mail), including these General Terms and Conditions of Delivery. The purchase agreement and the General Terms and Conditions of Delivery contain all agreements between the parties with regard to the contract.
- (3) Amendments and modifications to the agreements, including these General Terms and Conditions of Delivery, must be made in writing in order to be effective. With the exception of managers or authorized signatories, our employees are not entitled to make any differing verbal agreements.
- (4) We reserve the right to property or copyright to all offers and cost estimates submitted by us as well as to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and equipment provided to the customer. The customer shall not be permitted to disclose these objects, as such or in content, to third parties, to use them himself or through third parties or to reproduce them. At our request, he shall be obliged to completely return such objects to us and to destroy any copies produced if they are no longer required by him in the normal course of business or if negotiations do not lead to the conclusion of a contract. Storage of data provided electronically for the purpose of standard data backup shall be the only exception to this.
- (3) Without prejudice to our rights arising from default of the customer, we shall be entitled to demand from the customer an extension of delivery and performance periods or a postponement of delivery and performance dates for the period during which the customer does not meet his obligations pursuant to the contract.
- (4) We shall not be liable for impossibility of delivery or for delays in delivery, if such impossibility or delay is caused by force majeure (e.g. pandemic-related restrictions), disruptions of operations of any kind, transport delays, strikes, lawful lockouts, labour, energy or raw materials shortages, lack of official permits or official measures, or incorrect or delayed supply by suppliers shall release us from our obligation to perform for the duration of the disruption and to the extent of its effect. If such events make performance substantially more difficult or impossible for us and the impediment is not only of temporary duration, we shall be entitled to withdraw from the contract. In the case of hindrances of a temporary nature, the performance periods shall be extended by the period of the hindrance plus a reasonable start-up period. If, as a result of the delay, the customer cannot reasonably be expected to accept the service, the customer shall be entitled to withdraw from the contract, which withdrawal is to be performed immediately by an instrument in writing (e.g. e-mail). The customer shall not be entitled to any claims for damages.

### § 3 Prices and payment

- (1) The prices apply to the scope of services and delivery specified in the order confirmations. Additional or special services will be charged separately. The prices are in EURO ex works plus packaging, the applicable value added tax and transport insurance; for export deliveries, customs duties as well as fees and other public charges are not included.
- (2) If the agreed prices are based on our list prices and if the delivery is to be effected more than four months after conclusion of the contract, our list prices valid at the time of delivery shall apply.
- (5) We shall be entitled to partial deliveries and partial services as well as to under-deliveries and over-deliveries to the amount of 10 %, if this does not conflict with substantial interests of the customer.
- (6) If we are in default with a service or if a service is impossible for any reason whatsoever, our liability for compensation shall be limited pursuant to provision § 8 of these General Terms and Conditions of Delivery.

### § 5 Place of performance, shipping, packaging, passage of risk, acceptance

- (1) The place of performance for all obligations resulting from

the contract shall be the registered office of our company in Güglingen, unless other agreements have been made. If the installation is part of the contract, the place of performance shall be the place at which the installation is to be performed.

- (2) The type of shipping and packaging are subject to our discretion. The cost of shipping and packaging shall be borne by the customer. If the customer requires drop shipping delivery, we shall charge a processing fee of EUR 15.00 to a maximum of EUR 100.00 for each delivery.
- (3) In cases of small orders with a net purchase value of less than EUR 150.00, we will charge a processing fee of EUR 25.00 in addition to shipping and packaging.
- (4) Storage costs incurred by us after transfer of risk shall be borne by the customer. If we store the goods to be delivered, the storage costs amount to 0.25% of the invoice amount of the delivered goods per completed week. We reserve the right to assert and prove further storage costs. The customer shall be entitled to prove lesser damage.
- (5) We shall provide for transportation insurance of the consignment without recognising any legal obligation to this effect.
- (6) If acceptance has to take place, the purchase item shall be deemed accepted if:
  - a) the delivery and, provided we also have to perform installation, the installation are completed, and we have set the customer a reasonable deadline for acceptance;
  - b) within this period, the customer has refused acceptance for any reason other than for a defect of which the customer has notified us and which substantially impedes or makes impossible the use of the purchased item;
  - c) 12 working days have passed since delivery or installation and we have informed the customer of the delivery or installation, or
  - d) the customer has begun to use the purchased item (e.g. a delivered plant has been put into operation) and six workdays have passed since delivery or installation

#### **§ 6 Warranty, material defects, acceptance of the disposal obligation by the customer**

- (1) The warranty period shall be one year from the date of delivery or, if acceptance is required, from the date of acceptance. § 8 section 5 hereto shall remain unaffected.
- (2) The goods delivered must be carefully inspected immediately after delivery to the customer or to the third party designated by the customer. With regard to obvious defects or other defects which would have been recognizable in the case of an immediate examination, they shall be deemed to be accepted by the customer if we do not receive written notification (e.g. e-mail) of defects within three workdays after delivery. With regard to other defects, the delivery items shall be deemed to have been accepted by the customer if the notice of defect does not reach us within three workdays after the date of detection of the defect. Upon request by us, a rejected delivery item must be returned to us free of freight charges.
- (3) In the case of material defects of the goods delivered, we shall first be entitled to rectify or replace the goods at our discretion within a reasonable period of time.
- (4) Insignificant or typical variations in colour, dimensions, weight and quality shall not be considered to be defects of the delivery items.
- (5) In the case of defects of components of other manufacturers, which we cannot remedy for license or actual reasons, we will, at our discretion, assert our warranty claims against the manufacturers and suppliers on behalf of the customer or assign them to the customer.  
In the case of such defects, there shall only be warranty claims against us subject to the other conditions and according to the provisions of these General Terms and Conditions of Delivery and

only if the aforementioned claims against the manufacturer and suppliers could not be enforced or if such enforcement is futile, for example, due to insolvency. During the duration of the legal dispute, the period of limitation of the customer's warranty claims against us shall be suspended.

- (6) The warranty shall be void if the customer modifies the delivery item without our consent or has it modified by a third party and such modification renders the rectification of the defect impossible or unreasonable. In any such case, the customer shall bear the additional costs arising from such modification for rectification of the defect.
- (7) If, in individual cases, a delivery of used items is agreed with the customer, such delivery shall be performed under exclusion of any warranty for material defects.
- (8) The customer shall be obliged to dispose of the delivered goods when they are no longer used at his own cost and in full compliance with all pertinent regulations. The customer shall indemnify us from the obligations pursuant to § 19 of the German Electronic Equipment Act (obligation of manufacturers to take back their products) and from any claims of third parties related to this. The customer shall contractually oblige any other commercial third party to which the customer transfers the delivered goods to dispose of such goods according to the pertinent regulations when such goods are no longer used. If the customer fails to contractually oblige third parties to which the customer transfers the delivered goods to take on the disposal obligation and to oblige his customers to take on such disposal obligation, the customer shall be obliged to take back the delivered goods at his own expense after the end of use and to dispose of them properly in accordance with the statutory provisions. Our claim to the above transfer of indemnification or reimbursement through the customer shall be extended by a period of limitation of two years after the final termination of the usage of the delivery item. The two-year period of suspension of the limitation shall not begin until we receive a written notice of the customer stating that he has ceased to use the device.

#### **§ 7 Infringement of intellectual property rights**

- (1) Pursuant to this provision § 7, we shall ensure that the delivery item is free from industrial property rights or third-party copyrights. Each party to this contract shall immediately notify the other party to this contract by an instrument in writing if claims with regard to the infringement of such rights are asserted against him.
- (2) In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, alter or replace the delivery item in such a way that no rights of third parties are infringed, but the delivery item continues to fulfil the contractually agreed functions; or we shall enter into a license agreement in order to obtain the right to use the delivery item for the customer. If we should not be able to succeed within a reasonable period, the customer shall be entitled to withdraw from the contract or to reasonably reduce the purchase price.
- (3) In the case of infringements of laws by products of other manufacturers delivered by us, we shall, at our discretion, assert our claims against the manufacturers and suppliers on behalf of the customer or assign such claims to the customer. In these cases, there shall only be claims against us subject to the provisions of this provision § 7 and only if the aforementioned claims against the manufacturer and suppliers could not be enforced or if such enforcement is futile, for example, due to insolvency.

- (4) If an order is to be filled (designs, etc.) according to customer specifications, drafts or instructions, the customer shall be fully responsible for obtaining all rights of commercial exploitation of the property rights that may be contained in his specifications, drafts or instructions. If the execution of an order according to specifications, etc. of the customer violates third-party property rights or labelling obligation, the customer shall undertake to indemnify us from any resulting claims for compensation, compensation for expenses or reimbursement of third parties.

### § 8 Liability for damages in case of fault

- (1) Our liability shall be limited to intent and gross negligence, unless we are charged with the violation of an essential contractual obligation. In this case, our liability shall be limited to the damages typical for the contract and foreseeable by us.
- (2) The amount of our liability shall be limited to the amount of our liability insurance's customary coverage of € 12.5 million Euros.
- (3) The above exclusions and limitations of liability shall apply to the same extent on behalf of our organs, legal representatives, employees and other vicarious agents.
- (4) If we provide technical information or consultancy services and such information or services are not a part of the scope of services agreed upon by contract and owed by us, this shall be free of charge and without any liability whatsoever.
- (5) The limitations of this provision § 8 shall not apply to expressly guaranteed characteristics, to our liability under the German Product Liability Act (Produkthaftungsgesetz), or to damages arising from injury to life, body or health.

### § 9 Retention of title

- (1) We retain the title to the sold goods until we have received full payment of all our present and future receivables arising from the purchase contract and from an ongoing business relationship (secured claims).
- (2) Prior to full payment of the secured claims, the goods subject to retention of title shall neither be pledged to third parties nor transferred to third parties for security. The customer shall notify us in writing (e.g. e-mail) immediately if an application for the opening of insolvency proceedings is filed or if third parties attempt to seize the goods under retention of title (e.g. by means of distraint or attachment).
- (3) The customer shall be entitled to resell and/or process the goods under retention of title in the ordinary course of business, subject to revocation pursuant to provision (c) below. In this case, the following provisions shall apply in addition.
- (a) The retention of title shall cover the full value of the products resulting from processing, mixing or combining our products; we shall be deemed the manufacturer. If, in the case of processing, mixing or combining with goods of third parties, their rights of ownership remain, we shall acquire co-ownership to the ratio of the invoice amounts of the processed, mixed or combined goods. If our ownership expires due to combination, mixing or processing with other items not belonging to us, the ownership of the customer shall pass to us on a pro rata basis.
- (b) The customer shall assign to us, as a security, the claims arising against third parties from the resale of the reserved goods or of the product. We accept the assignment. The obligations of the customer pursuant to provision § 9 (2) hereto shall also apply in respect of the assigned claims.
- (c) The customer shall remain entitled to collect the claim in addition to us. We undertake no claim as long as the customer meets his payment obligations. If any of the above conditions are not met, we shall be entitled to request the customer to notify us of the assigned claims and the corresponding debtors and provide us with any information and the appropriate documents necessary for us to collect such claims, and to notify the debtors (third parties) of such assignment. In

this case, we shall also be entitled to revoke the customer's authorization to resell and process the goods subject to retention of title.

- (d) If the liquidable value of the securities exceeds our claims by more than 10 %, we shall, at the customer's request, release securities at our discretion.

### § 10 Final clause

- (1) If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer has no general court of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes arising from the business relationship or in conjunction with the business relationship shall be court in charge at our registered office in Güglingen.
- (2) The relations between us and our customers are subject exclusively to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall not apply.
- (3) If a provision of the contract or in these General Terms and Conditions of Delivery is invalid or unenforceable or becomes invalid or unenforceable, the validity of the remaining provisions shall not be affected. If and to the extent a provision is invalid or unenforceable or that the contract or these General Terms and Conditions of Delivery contain gaps in the provisions, those provisions shall be deemed to have been agreed upon which the contract parties would have agreed upon in view of the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of such invalidity or gaps.

### Notice

We collect and process the data of our customers necessary for the processing of the contract in compliance with the statutory provisions. Further details can be found in the data protection information available on our website.

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