

# GENERAL TERMS AND CONDITIONS OF DELIVERY OF AKKU VISION GMBH



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## § 1 Validity

1. All deliveries, performances and offers of Akku Vision GmbH (hereafter referred to as 'Seller') are exclusively subject to these General Terms and Conditions of Delivery. They are part of all contracts signed between Seller and contract partners (hereafter referred to as 'Buyer') on supplies or services offered by Seller. They shall also apply to all future supplies, performances or offers made to the Buyer even if they are not especially agreed upon again.
2. Buyer's Terms and Conditions or those of third parties shall not be applicable, even if Seller does not contradict them in an individual case. Even if Seller refers to a letter that contains Buyer's Terms and Conditions or those of a third party or refers to them in particular then this all not imply that those Terms and Conditions are accepted.

## § 2 Offer and contract signing

1. All offers made by Seller shall be non-binding unless they are explicitly marked as being binding or contain a specific term of acceptance. Seller can accept orders or contracts within 2 weeks of having received them.
2. Solely a signed purchasing contract including these General Terms and Conditions of Delivery shall be relevant for the legal relationship between Seller and Buyer. This contract shall reflect all agreements made between the contract parties on the subject matter of the contract. Verbal agreements made by Seller prior to contract signing shall not be legally binding and verbal agreements made by the contract parties shall be replaced by a written contract unless they do not explicitly specify unambiguously that they continue to apply.
3. Supplements and amendments to the agreed upon arrangements including these Terms and Conditions of Delivery shall be made in writing to become effective. Apart from managing directors and authorised representatives none of the other employees shall be entitled to verbally agree to deviating arrangements. The written form is considered to be observed by using a telecommunication transfer such as fax or e-mail as long as a copy of the signed declaration is sent by surface mail.
4. Seller's details on the subject of delivery or service (e.g. weights, dimensions, utility values, capacity, tolerances and technical data) as well as our presentation of same (e.g. drawings or diagrams) are only approximately relevant provided the use is not particularly specified in a contract, then these shall not be guaranteed features of the quality but descriptions or markings of the delivery or service. Customary deviations and those deviations that occur due to legal regulations or represent technical improvements as well as replacing components by equivalent parts shall be permissible as long as their use does not impair the contractually intended purpose.
5. Seller reserves the right on the property or copyright of all offers and estimates submitted as well as on all drawings, diagrams, calculations, leaflets, catalogues, models, tools, and other documents and auxiliary means made available to Buyer. Buyer shall not be allowed to make these objects as such available to third parties, disclose them through third parties, use them or reproduce these without having obtained the explicit approval by Seller. Upon request by Seller, Buyer must return these objects completely to Seller or destroy possibly produced copies thereof if they are no longer of use in a regular business transaction or in case the contract negotiations do not end with a contract signing.

## § 3 Prices and Payment

1. The prices shall refer to the performance and delivery as per order confirmation. Additional performances or special performances will be invoiced separately. The prices are to be understood in Euros, ex works, plus despatch charges, legally applicable value added tax, and in case of export deliveries plus customs duties, fees and other public charges.
2. As long as the agreed upon prices are subject to the Seller's list prices and in case the delivery will only take place in more than four months following contract signing, the Seller's list prices shall apply as of the day of delivery.
3. Invoices must be settled within eight days without any deductions, unless otherwise agreed in writing. The date when the invoice is received by the Buyer shall be the relevant date for payment. Payment by cheque is excluded, unless it has been agreed upon separately in an individual case. If Buyer does not pay upon due date, the outstanding amounts shall be charged with an interest rate of 5% p.a. from the due date; asserting the right to increase the rate of interest and further damage in case of default remains unaffected hereby.
4. Setting charges off against Buyer's counter claims or retaining payments because of such claims shall only be permissible as long as the counter claims are uncontested or have been confirmed to be legally binding.
5. Seller shall be entitled to carry out or perform still outstanding deliveries or services against prepayment or securities, should he become aware of circumstances following contract signing that essentially reduce Buyer's creditworthiness and by which payment of open Seller's invoices to be made by Buyer resulting from the relevant contract (including from other individual contracts where the same framework contract applies) is jeopardised.

#### **§ 4 Delivery and Delivery Time**

1. Deliveries are ex works
2. Periods and terms for deliveries and services set by Seller only apply approximately, unless a fixed period or date has explicitly been promised or agreed upon. In as far as deliveries have been agreed, delivery periods and - dates shall refer to the time when the goods are handed over to a forwarding agent, freight carrier or other third parties contracted for the transport.
3. Regardless of his rights concerning Buyer's delay, Seller can request to extend or shift delivery and service periods to Buyer by a period in which Buyer does not comply with his contractual obligations towards Seller.
4. Seller shall not be liable for not being able to delivery or in case of delivery delays, provided these are caused by force majeure or other not foreseeable events not to be accounted for at contract signing (e.g. any kind of production breakdown, difficulties in obtaining materials or energy, transport delays, strikes, legal lockouts, insufficient manpower, energy or raw materials, difficulties in obtaining necessary official permits or official measures or suppliers not supplying, wrongly supplying or not supplying in time), which Seller is not responsible for. In as far as such events essentially impede Seller to deliver or perform or even render it impossible and in case the impediment does not appear to be short term, the Seller shall be entitled to terminate the contract. In case of short term impediments, delivery- or performance date are extended or shifted by the period of the impediment, plus a relevant start-up period.
5. Seller shall be entitled to supply part deliveries, if
  - the part delivery can be used by Buyer within the scope of contractual purposes;
  - delivery of the remaining goods ordered is ensured,
  - and does not cause Buyer considerable extra work or involve additional costs (unless Seller agrees to take over these costs himself).
6. Should Seller fall behind with a delivery or performance or a delivery or performance irrespective for what reason becomes impossible for him, Seller's liability to pay damage shall be restricted to § 8 of these Terms and Conditions of Delivery.

#### **§ 5 Place of fulfilment, despatch, packaging, transfer of risk, acceptance**

1. Place of fulfilment for all obligations from this contract is Haibach, unless otherwise specified.
2. Type of despatch and packaging shall be subject to Seller's professional judgement.
3. The risk is transferred to Buyer at the latest when the delivery object is handed over to the forwarding agent, freight carrier (whereby the start of the loading process is relevant) or other third party involved in carrying out the despatch. This shall also apply in case of part deliveries or Seller has accepted other performances (e.g. despatch). If the despatch or the handing over is delayed due to a circumstance for which the Buyer is responsible, the risk is transferred to Buyer on the day when the goods to be delivered are ready for despatch and Seller has notified Buyer accordingly.
4. Buyer is responsible for storage costs once the risk is transferred. If goods are stored at Seller's place, storage charges amount to 0.25% of the invoice amount of the goods to be stored per completed week. Asserting further or lesser storage costs and the proof thereof remain reserved.
5. The consignment shall only be insured by Seller upon the explicit buyer's request and at his cost against theft, breakage-, fire-, and water damage or other insurable risks.
6. In as far as a final acceptance has been agreed, the purchased object is considered to be accepted, when
  - the delivery has been handed over to the forwarding agent;
  - Seller has informed Buyer with reference to the acceptance according to § 5 (6) and requested him to carry out the acceptance;
  - twelve working days have passed since delivery or Buyer has started using the purchased item (e.g. operated the purchased item) and six working days have passed since this event, and
  - Buyer has not carried out an acceptance within this period due to another reason than one of the reasons mentioned by Seller regarding shortcomings which render use of the purchased item impossible or essentially impedes its use.

#### **§ 6 Warranty, material defects**

1. The warranty period is one year. This period does not apply to compensation claims by Buyer resulting from injuries to life, body or health or from intentional or grossly negligent breach of duty caused by Seller or one of his vicarious agents, which are restricted in time in compliance with legal regulations. Nor does this period apply to a voluntarily granted 24-month guarantee period on rechargeable batteries and also voluntarily granted 12-month guarantee on chargers. The separately stated guarantee conditions of Akku Vision GmbH apply.
2. The objects supplied shall be thoroughly checked by Buyer or third persons appointed by him upon delivery. These are considered to be accepted by Buyer in respect of obvious defects or other defects which would have been apparent if they had been checked at once and with care, unless Seller receives a complaint in writing within seven working days following the handing-over when the defect becomes apparent. If the defect had been obvious to Buyer at an earlier time during normal use, then this earlier time shall be the relevant start of the period for a complaint. Upon Seller's request, the object complained about shall be returned to Seller free of charge.
3. In case of material defects of the objects supplied, Seller is obliged and entitled within an appropriate space of time to decide either to rework the objects or replace these.
4. In case of defects of components produced by other manufacturers that Seller cannot rectify due to licensing right or actual reasons, Seller shall decide either to submit a guarantee claim towards manufacturers and suppliers in Buyer's name or assign these rights to Buyer. Guarantee claims towards Seller in case of such defects and subject to the standard prerequisites and in accordance with the General Terms and Conditions of Delivery only exist, once the afore-mentioned claims against the manufacturer and suppliers cannot be asserted by a court or, for example, become pointless due to insolvency. While the legal dispute is ongoing, the limitation in respect of Buyer's guarantee claims towards the seller is suspended.
5. The guarantee performance becomes null and void, if Buyer amends the object to be supplied or has it amended by a third party without Seller's approval, whereby rectifying a defect becomes impossible or is unacceptably difficult. In every case Buyer has to bear the additional costs that are incurred by having to rectify the defects.
6. A delivery of second-hand objects agreed upon in an individual case with Buyer is carried out by excluding any guarantee performance for material defects.

## § 7 Property Rights

In case of legal violations of products supplied by Seller from other manufacturers, Seller shall assert claims against those manufacturers and suppliers in Buyer's name or assign these to Buyer. In this case claims against Seller only exist according to § 7, once the afore-mentioned claims against the manufacturer and suppliers cannot be asserted by a court or, for example, become pointless due to insolvency.

## § 8 Liability for compensation due to fault

1. The Seller's liability for compensation is - irrespective of the legal basis, in particular due to the impossibility, default, defective or wrong delivery, contract violation, violating obligations of contract negotiations and not permitted action and where this depends on a fault - restricted in compliance with § 8.
2. Seller shall not be liable for simple negligence of his bodies, legal representatives, employees or other vicarious agents, unless it violates the contractual obligations. Essential to the contract is the obligation to supply on time and install the object to be supplied, its being free from legal violations as well as material defects, that impede its functionality or usability considerably, as well as the obligation to advise, protect and care that will enable Buyer to use the delivered object as per contract or protect life and limb of Buyer's personnel or its property from considerable damage.
3. Although Seller is liable for compensation according to § 8 (2), this liability shall be limited to damage that Seller has foreseen as a possible consequence of a contract violation upon signing the contract or which he should have foreseen if the object was used with standard due care. Consequential damage and subsequent damage that is the consequence of defects of the supplied object is only replaceable provided such damage can be typically expected by the supplied object being used as intended.
4. In case of a liability for simple negligence, Seller's obligation to replace material defects and the thus resulting further pecuniary loss shall be restricted to an amount per case of damage relevant to the current sum insured of his product liability insurance or liability insurance, even if it concerns a violation of contractual obligations.
5. The afore-mentioned liability exclusions and -restrictions shall also apply to the same extent to Seller's bodies, legal representatives, employees and other vicarious agents.
6. In as far as Seller gives technical information or advice and in case this information or advice is not owed to the contractually agreed delivery extent, this is done free of charge and excludes any liability.
7. The restrictions of § 8 shall not apply to Seller's liability regarding intentional behaviour, guaranteed procurement features, injuring life, body or health or according to the product liability law.

## § 9 Retention of title

1. The objects of deliveries (reserved goods) shall remain Seller's property until all claims against Buyer resulting from the business relationship have been fulfilled. The cover limit amounts to 110% of the secured demands. If this is exceeded, there is a claim to release.
2. Buyer shall be entitled to sell on reserved goods in standard business transactions. Already at this stage Buyer will assign the amount for the sold reserved goods to Seller at the amount agreed upon in the commercial invoice (including VAT). This assignment is valid irrespective of whether the goods are sold on with or without having been processed. In case of processing the parties have agreed that there exists a Seller's co-ownership of this new product at the amount of his claim. The client remains authorised to collect this claim even after assignment. The Buyer's authorisation to collect the claim himself remains unaffected. However, Seller shall not collect the claim as long as buyer meets his payment obligations from achieved sales, is not in default and has applied to file insolvency proceedings or in case there exists a suspension of payments.
3. Buyer has to notify Seller at once in case of attachments, confiscations or other decrees or interference of third parties.
4. In case of Buyer's breaches of duty, in particular in case of default, Seller shall be entitled - after a grace period for the Buyer has expired unsuccessfully - apart from having the goods returned to him to withdraw from the contract; this shall not affect the statutory provisions where it is not necessary to allow a period of grace; Buyer shall be obliged to release the goods. Taking back the goods, asserting the retention of title, or seizing the reserved goods by Seller does not require termination of the contract, unless Seller has explicitly stated it.

## § 10 Final Provisions

1. If the Buyer is a merchant, legal entity of public law or a public law special fund, or he does not have a place of jurisdiction in the Federal Republic of Germany, then it is the Seller's choice to determine a place of jurisdiction for possible disputes deriving from this business relationship between Seller and Buyer. Aschaffenburg shall be the exclusive place of jurisdiction for all actions taken against Seller. Any mandatory provisions of applicable law providing for exclusive jurisdiction shall remain unaffected by this clause.
2. The relationship between Seller and buyer is exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention of April 11, 1980 (CISG) on Contracts for the International Sale of Goods does not apply.
3. In as far as the contract or these General Terms and Conditions of Delivery contains loopholes, those legally effective provisions are considered as agreed to fill the gaps, that the contract partners would have agreed upon in respect of the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery, had they been aware of these loophole.

Note:

Buyer is informed about the fact that Seller saves data from the contract in compliance with § 28 Federal Data Protection Act [Bundesdatenschutzgesetz] for the purpose of data processing and that he retains the right to transmit these data to third parties (e.g. insurances) if they are necessary to fulfil the contract.