

General Terms of Sale, Delivery and Payment

I. General Conditions

1. The General Terms of Sale, Delivery and Payment (General Terms and Conditions of Business; hereinafter named GTC) of SEPA EUROPE GmbH (hereinafter named User) apply to the entire business connection. These GTC only apply to entrepreneurs, legal entities under public law or special funds under public law (hereinafter named customer).
2. The General Terms and Conditions of the Proprietor apply to all future business relations, even if they are not agreed explicitly again. All changes to these delivery conditions, in particular deviating or supplementary Terms and Conditions of the customer are hereby rejected. Irrespective of this, deviating conditions of the customer shall not apply, even if the User does not expressly object to them again. In so far as the Proprietor refers to a letter that contains or refers to the Terms and Conditions of the customer, this does not signify agreement with the validity of such Terms and Conditions. Likewise, the unconditional acceptance of payments does not imply consent to the customer's terms and conditions.
3. Supplements, amendments or ancillary agreements to these Terms and Conditions shall only be valid if confirmed in writing by the User. This also applies to the waiver of the written form requirement.

II. Quotation, closing contract and contractual documents

1. The quotations of the User are always without obligation and revocable at all times, as long as they have not been accepted as legally binding. A contract is only concluded when the User confirms the Customer's order in writing or performs the delivery or service on order without separate confirmation.
2. The written order confirmation of the User is decisive for the scope of delivery insofar as not otherwise agreed. In the event of immediate delivery, confirmation will be replaced by the invoice or the delivery note of the User.
3. Minor amendments or deviations to services that are customary in trade that do not affect the intended use are permissible.
4. The User will only accept a procurement risk when this has been expressly agreed in writing and agreed as „Acceptance of the procurement risk“ by the parties or words to that effect.
5. Information provided by the User on the object of delivery (e.g. weight, dimensions, values in use, power rating, tolerance and technical data) as well as the representation of same (e.g. drawings and illustrations) are only of limited significance and descriptions or identification of the delivery and not warranted characteristics or shelf life guarantees.
6. Special customer requests deviating from the usual product specifications shall be fixed in writing and require written confirmation by the User.

III. Prices, conditions of payment

1. The prices mentioned in the order confirmation are valid, alternatively the prices that are valid on receipt of the order. Unless otherwise agreed, the prices are in EURO, ex factory plus valid statutory VAT. Unless otherwise agreed, the prices include packaging costs. The Customer is responsible for the costs for freight insurance if this has been effected at the request of same.
2. Unless otherwise agreed, all deliveries shall be paid to the User strictly net as from date of invoice, without bank charges.
3. Bills and cheques apply as provisional performance; Bills will only be accepted by specific agreement, discount and expenses will be paid by the Customer. In such cases, fulfillment shall only occur when the User can finally dispose of the respective amount.
4. The Customer may set off only those claims that are undisputed, recognized by the user or against which no legal recourse is possible.
5. Unless expressly agreed otherwise in writing, all payments are due net within 30 days of receipt of the delivery and the invoice by the customer. Receipt by the User shall be decisive for timely payment. Cheques will only be accepted on the basis of a corresponding agreement and only on account of performance. All costs arising from a payment shall be borne exclusively by the customer.
6. Default of payment shall occur without further reminder on the 31st day after receipt of the delivery and the invoice. If the date of receipt of the invoice is uncertain, the customer shall be in default at the latest on the 31st day after receipt of the delivery and the due date determined on the basis of the payment term.
7. In the event that the Customer is in default of payment, interest on arrears shall be charged at the statutory rate. The User shall be entitled at any time to prove and charge a higher interest loss. In addition, the User may, after written notice to the Customer, suspend the performance of its obligations until receipt of the payments. § 353 of the German Commercial Code remains unaffected.

8. Should the financial situation deteriorate to an extent that affects the creditworthiness of the Customer or should the User become aware of such circumstances, the User may make all claims that are not subject to defence immediately payable by the Customer and assert a right of retention vis-à-vis the claims of the Customer as long as they are based on other contracts or demand contemporaneous performance or replenishment of loans, in which case any deadlines and dates shall be extended or postponed accordingly. If the customer does not make advance payment or provide security within a reasonable period after written request, the proprietor is entitled to withdraw from the contract without setting a further deadline. If a delivery has already been made, the User may, notwithstanding No. 5, demand immediate payment of the invoices.
9. Should charges or fees that affect the movement of merchandise change after conclusion of contract, the User is entitled to adapt prices accordingly if these changes were not foreseeable at the time of conclusion of the contract. The same applies to unforeseeable cost increases pertaining to personnel as well as price increases of primary suppliers, that were not known at the time of conclusion of the contract, but which however become valid prior to delivery to the User.
10. Subsequent technical modifications instigated by the Customer that deviate from the subject matter of the contract result in a review and if necessary adaptation of the agreed prices and dates.
11. The assignment of all claims of the Customer against the User to third parties shall require the express written consent in order to be effective. § 354a HGB remains unaffected.

IV. Delivery, delay, impossibility

1. The delivery dates specified by the User are approximate dates; these are approximate and unbinding, unless expressly agreed otherwise in writing. Delivery periods commence on the date of despatching the order confirmation. Compliance with the agreed delivery dates is subject to the punctual receipt of all documents that the Customer shall provide, of the required approvals and releases in particular of plans as well as to compliance with the agreed terms of payment and other obligations by the Customer. If this is not the case, the delivery date shall be extended appropriately. This is not applicable insofar as the User is responsible for the delay.
2. Partial deliveries are permissible and their separate invoicing allowed, if and insofar as the partial delivery can be used by the Customer within the framework of the contractual intended use, the delivery of the remaining ordered goods is guaranteed and the customer has no additional costs.
3. The delivery period shall be deemed complied with, if the subject matter of delivery has left the premises of the User by the end of the stipulated time or has been notified as ready for despatch.
4. The occurrence of a delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required.
5. The occurrence of a delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required. In the event of the occurrence of unforeseen events that are beyond the control of the User and which the User was unable to avert despite the reasonable diligence due to the circumstances of the case – whether they occur to the User or a sub-supplier, e.g. delays in the delivery of significant raw materials, or energy, strikes, lockouts, war, warlike conditions, sabotage, epidemics, pandemics the User is entitled to withdraw from the delivery contract fully or in part or to extend the delivery time for the period of the hindrance, even if they occur during an already existing delay. This also applies to late or improper deliveries or services on the part of the User's suppliers, unless the User is responsible for such circumstances. The User will inform the Customer of such circumstances immediately. Should the hindrance last longer than three months, the Customer is entitled to withdraw from the contract in respect of the part of the contract not yet fulfilled after a reasonable period of grace.
6. A case of non-availability of the service in this sense shall be deemed to be in particular the non-timely self-delivery by suppliers of the User if the User has concluded a congruent covering transaction, neither the User nor its suppliers are at fault or the User is not obligated to procure in the individual case.
7. In the event of delay of delivery, the Customer can withdraw from the contract after elapse of an adequate period of grace; in the event of impossibility of the performance of the User, the Customer is also entitled to this right without period of grace. This also applies, if in the event of an order, part of the delivery is impossible and the Customer has a legitimate interest in the rejection of the partial delivery. Delay of delivery is equivalent to impossibility, when delivery takes longer than two months.
8. Should the User be delayed with delivery or performance or a delivery or performance be impossible regardless of the reason, the liability of the User for damages is limited to the provisions of Paragraph X of these general terms of delivery.

V. Despatch and transfer of risk

1. Place of performance and fulfilment for the contractual obligations of the User are the industrial premises of the User, unless otherwise specified in the contract
2. Goods are despatched solely at the request of the Customer. Route and means of despatch, if not otherwise agreed, shall be selected by the User.
3. The risk of deterioration of performance and payment is transferred to the Customer at the time when the goods are handed over by the User to the forwarding agent or carrier or person or establishment chosen to carry out the despatch, at the latest however after leaving the warehouse of the User, (this shall also apply if partial deliveries are made or if the User assumes other services (e.g. shipment processing or shipping costs)). If the goods are ready for despatch and despatch or acceptance is delayed for reasons for which the Customer is responsible, risk will be transferred to the Customer already on receipt of the notification that the goods are ready for despatch.
4. Storage costs and the costs for the unsuccessful offer after the transfer of risk shall be borne by the customer if the customer is responsible for the delay in delivery. These costs of storage amount to 0.25% of the invoice amount of the delivery items to be stored per expired week. Subject to enforcement and evidence of further or lower storage costs. In such cases, the risk of accidental loss or accidental deterioration shall pass to the customer upon notification of readiness for shipment.
5. Delivered objects shall be accepted by the Customer, even when they exhibit insignificant defects; the rights of the Customer due to defects remain unaffected.
6. If parts, material or other substances are provided by the customer for the execution of its order, the customer shall be responsible for their suitability. Unless expressly agreed otherwise in writing, the User shall therefore not carry out any incoming goods inspection or suitability test. If the materials provided by the customer are unusable or unsuitable for the order and if this is not obvious to the User, the customer shall have no warranty or liability claims against the User in this respect. Furthermore, the customer shall compensate for any damage caused by the unusability or unsuitability of the materials, unless he is not responsible for the unusability or unsuitability.

VI. Call orders

1. In the event of orders with continuous delivery, the User shall be given requests for delivery or type classification in approximately the same monthly quantities. Should the total of the individual requests exceed the contractually agreed quantity, the User is entitled but not obliged to deliver the excess quantity. The price is based on the market price existing at the time of the request for delivery for comparable specifications.
2. Call quantities that have been ordered on a binding basis, shall be accepted at the latest within a month after expiry of the deadline set in the contract (limited duration), without requiring a special request for acceptance. On expiry of this deadline, the User is entitled to despatch the goods and invoice them or to withdraw in full or partially from the contract.

VII. Reservation of title

1. The User reserves the right to ownership (goods subject to retention) of all goods it has delivered up to receipt of all payments arising from the existing business relationship with the customer; the reservation refers to all claims on current account balances.
2. Goods subject to retention shall be treated and processed on behalf of the User as manufacturer without resulting in any obligations for same and is only permitted in the ordinary course of business. Should the Customer combine, mix, unite or process the goods subject to retention or transform them jointly with other goods, the User shall be entitled to a co-ownership of the new object at the ratio of the invoice value of the goods subject to retention to the other combined, mixed, united or processed objects. The Customer shall maintain joint ownership for the User free of charge. In case the combining was done in a way which results in the Customer's goods or those of a third party being considered principal goods, it is deemed to have been agreed that the Customer transfers a pro-rated co-owners interest to the User. The User accepts the assignment of the co-ownership shares. The co-ownership to be transferred is determined by the relation of the value (invoice value) of the combined goods subject to retention to the value of the main issue.
3. The Customer may only sell the goods subject to retention that are the property of the User in the course of regular business, the claims arising therefrom shall pass to the user. Other disposals, in particular pledges and the granting of security interests of the goods subject to retention are not permitted. Claims resulting from resale or other legal basis (insurance, tortious act) with regard to the goods subject to retention (including VAT), shall be assigned by the Customer already now by way of security to the User. The User accepts the assignment. If the assigned claim is included in a current account, the Customer hereby assigns to the User a portion of its balance claim, including the final balance, in the amount of its resale claim. The Customer remains revocably entitled to collect the justified assigned receivables in regular business. The User may only revoke this direct debit mandate in the event of realization.
4. Should the value of the securities to which the User is entitled, exceed the total of all receivables by more than 20 %, the User shall release the excessive securities at its option.
5. In the event of conduct of the customer in contravention of the contract – in particular in the case of delayed payment – the Seller is entitled to withdraw from the contract (enforcement event) and demand return of the goods subject to retention.

6. In case third parties attempt to seize the goods subject to retention, the Customer will indicate that they are the property of the User and inform same immediately. The customer shall immediately inform third parties of the retention of title and the assignment by way of security. The customer shall bear the costs of defense against such seizures.

7. The Customer shall hold the items in the sole or co-ownership of the User as a custodian for the User with due commercial care. If the Customer takes out insurance for the goods subject to retention of title, it hereby assigns its claims under the respective insurance contract to the User, in the case of co-ownership in the ratio of the co-ownership share of the User to all co-ownership shares. The proprietor accepts the assignment.

VIII. Warranty, incoming goods inspection Liability for material defects, limitation period

1. Within the scope of the following provisions, the User warrants that the products delivered and services rendered are free from material defects or defects of title at the time of the transfer of risk. Defective products or services shall, at the discretion of the User, be repaired or replaced if the defect is not merely insignificant. Replaced parts shall become the property of the User. 2.

Unless expressly agreed otherwise in writing, all information about products, in particular illustrations, drawings, technical information and references to standards and specifications contained in offers and brochures, do not constitute guarantees of quality and/or durability within the meaning of Section 443 of the German Civil Code (BGB), but are only descriptions or identifications. The same shall apply to the delivery of samples or specimens. The basis of the liability for defects is above all the agreement made on the quality of the goods. All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by the User (in particular in catalogs or on the Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods. Insofar as the quality was not agreed upon, it is to be judged according to the legal regulation whether a defect exists or not (§ 434 para. 1 p. 2 and 3 BGB). The User shall not be liable for public statements of the manufacturer or other third parties (e.g. advertising statements) to which the Customer has not referred as being decisive for the purchase.

3. The Customer shall carefully inspect the deliveries of the User for defects, missing quantities etc. based on the purchase contract or contract for work and materials and make detailed complaints in writing at the latest two weeks after handover or delivery (§ 377 HGB). Should a defect at the time of handover only become apparent at a later point (concealed defect), this shall also be notified in writing immediately after detection of same.

4. The Customer shall give the User adequate time and opportunity to rework or replace the goods; otherwise the User is no longer responsible for resulting consequences.

5. The User can refuse fulfilment as long as the Customer does not fulfil its obligation to pay the User to the extent that corresponds with the defective part of the performance.

6. In the event of an entitled notice of defect, the right to retention of the Customer is only permissible when an adequate and reasonable relationship between the defect and contractual price exists. In the event of an unjustified notice of defect, the customer shall bear the costs incurred unless he is not responsible for the unjustified notice of defect. Flat-rate charges for notices of defects shall not be recognized.

7. If reworking fails or is not acceptable to the User, the Customer has the right to withdraw from the contract or to a reduction of the contractual price. A right to withdraw and reduction exerted by the Customer in this respect is binding for same.

8. At the request of the User, the defective object of delivery shall be returned freight paid and in appropriate packing to same. In the event of entitled notice of defect, the User shall reimburse the costs of the most reasonable despatch mode; this does not apply insofar as the costs increase because the object of delivery is at a place different from that of the place intended for use.

9. No liability will be assumed for natural wear or damage that arises after transfer of risk as a result of incorrect and negligible use or use not in accordance with the specifications of the User or as a result of excessive utilization or storage as well as by non-observance of the manufacturer's, assembly or operating instructions. Should the Customer or Third Party incorrectly rework, the User is not responsible for the resulting consequences. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has further processed them. Claims from supplier recourse are excluded if the defective goods have been further processed by the customer or another entrepreneur, e.g. by incorporation into another product.

10. Unless otherwise stipulated in Paragraph X of these General Terms and Conditions, further claims of the customer irrespective of the legal ground (in particular claims arising from violation of main and subsidiary duties, tort, culpability at conclusion of contract as well as other tortious liability) are excluded; this also applies to damage beyond the purchased goods as well as to claims to compensation for lost profit.

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X. Industrial property rights, copyrights, defects of title

1. Unless otherwise agreed, the User is only obliged to effect delivery in the country of the place of delivery free from any third party industrial property rights and copyrights (hereinafter referred to as property rights). Insofar as third party raises entitled claims against the Customer due to violation of property rights due to deliveries supplied by the User and used in accordance with the contract, the User is exclusively responsible to the Customer within the periods mentioned in Paragraph VIII, Point 11 as follows:
 - a) The User shall at its discretion and expense, either obtain a right to use the respective deliveries, modify them so that they do not infringe the protective right or exchange them. If this would be unreasonable to demand from the User, the Customer may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
 - b) The duty of the User to pay damages is defined in Paragraph X.
 - a) The above mentioned obligations of the User are only applicable insofar as the Customer informs the User immediately in writing of claims made by third party, insofar as the Customer does not acknowledge an infringement and all defensive actions are reserved to the User. If the Customer stops using the delivery in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Customer shall be excluded, insofar as it is responsible for infringement of property rights.
3. Claims of the Customer are further excluded, insofar as the infringement of the property rights was caused by the special specifications of the Customer for a purpose that was unforeseeable by the User or by the use of the delivery in a modified condition or together with products not delivered by the User.
4. Where other defects in title occur, the provisions of Paragraph VIII are applicable accordingly.

XI. Compensation and liability

1. Compensation claims are excluded in accordance with the following provisions, irrespective of the type of breach of duty, including impermissible tort insofar as wilful or negligent acts are not involved.
2. In the event of any essential breach of contract, the User shall be liable for every negligence, however, only up to the amount of the foreseeable damage typical to the contract. Major contractual obligations are those which the Customer urgently believes will be fulfilled by the User due to the nature of the legal transaction. Claims to loss of earnings as well as indirect and consequential damages will not be replaced, unless a characteristic of state guaranteed by the User is expressly intended to protect the contractual partner against such damages.

3. The liability limitations and exclusions in Points 1 and 2 do not apply in the case of liability for guaranteed characteristics, in the event of a breach of material contractual obligations, in the event of justifiable impossibility as well as in the event of culpable breach of life, body or health. Claims according to the Product Liability Act or according to other portfolios prescribed by law also remain unaffected.
4. Insofar as the liability of the User is excluded or limited, this also applies to its employees, representatives or other vicarious agents and subcontractors.
5. In the event of entitlement to reimbursement of expenses (§ 439 Abs.3 BGB), the points above are applicable accordingly.
6. Any further claims for damages, irrespective of their legal basis, shall be excluded. This shall also apply insofar as the Customer demands reimbursement of futile expenses instead of claiming compensation for damages in lieu of performance.
7. The Customer's right of recourse against the User shall only exist insofar as the Customer has not entered into an agreement with its customer that goes beyond the statutory claims.

XII. Data Protection

The User collects, processes, stores and uses personal data of the Customer for the purpose of processing and fulfilling the concluded contracts. In all other respects, it complies with the applicable data protection regulations, in particular the European General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG), and has taken technical and organizational measures to ensure that the data protection regulations are complied with by both the User and any external service providers.

Further information on data protection, in particular on the rights of the customer, can be found at <https://www.sepa-europe.com/datenschutzerklärung>.

XIII. Place of jurisdiction and applicable law

German law is applicable for these General Terms and Conditions and the entire legal relationships between the User and the Customer. The provisions of the UN purchasing law are not applicable (The Vienna Convention on International Sales 11.04.1980 [United Nations Convention on Contracts for the International Sale of Goods - CISG]). The German language is the language for both the contract and negotiations.

Place of performance and jurisdiction for all claims and legal disputes arising from the contractual relationship including processes for bills and documents are the headquarters of the User. Die Verwenderin ist jedoch berechtigt, den Kunden auch an den für seinen Sitz zuständigen Gerichten zu verklagen.

Should individual provisions of these General Terms and Conditions or parts of the contract be ineffective or become ineffective in full or partially, this does not affect the validity of further provisions of these General Terms and Conditions GTC, nor the efficacy of the contract.

As per April 2021