

General Terms and Conditions

§ 1 Scope of application:

1. These terms and conditions of sale apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB). We shall only recognize terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Sale if we expressly agree to their validity in writing.
2. These General Terms and Conditions of Sale shall apply to all contracts, including future contracts, which we conclude with the customer, insofar as they are legal transactions of a related nature.
3. Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these Terms and Conditions of Sale. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
4. We reserve the right to make changes and improvements to our articles insofar as they are reasonable for the customer, taking into account our interests.
5. The customer's rights under the contract are only transferable with our prior consent.
6. The customer is obliged to draw our attention to the statutory, official and other regulations, conditions and standards which apply at the place of installation of the subject matter of the contract, in particular to the execution of the delivery, assembly, operation, prevention of illness and accidents, export or import restrictions under foreign exchange law and all official regulations in general which are likely to delay or prevent delivery; the customer shall be liable for the consequences resulting from the absence of the necessary permits.

§ 2 Offer and conclusion of contract:

1. If an order is to be regarded as an offer in accordance with § 145 BGB, we can accept it within two weeks.

§ 3 Prices and terms of payment:

1. The price calculation shall be based on the price valid on the day of delivery or performance, plus the respective statutory value added tax, unless a different price agreement has been made. Prices are ex works plus packaging and transportation costs, transport insurance if applicable, as well as assembly, customs duties and freight. The validity of the offer can be found in the respective offer. Unless otherwise agreed, we shall be bound by the prices and information quoted for a maximum of six months. If carriage paid delivery has been agreed, this shall apply carriage paid to the receiving station of the ordering party (customer), excluding cartage. Additional costs and risks due to a special type of shipment requested by the customer (e.g. express goods, urgent goods, air freight) shall be borne by the customer, as shall costs for requested partial deliveries. In the case of shipment with the customer's own vehicle, a proportion of the freight costs shall be charged.
2. Taxes, contract fees, stamp duties, export, import and transit fees, customs and customs charges, official fees and the like shall be borne by the customer.
3. The prices stated in the order confirmation are binding for delivery within four months of conclusion of the contract. In the event of a later delivery date, we shall be entitled to increase the prices if the circumstances change after conclusion of the contract, in particular if there is an increase in raw material prices and wage, ancillary wage and/or transportation costs. In this case, price changes are only possible within the scope of and to compensate for the aforementioned price and cost increases.
4. The retention of payments by the customer is excluded if counterclaims result from a different contractual relationship. If the counterclaim is based on the same contractual relationship, the withholding of payments is only permissible if the counterclaims are undisputed or have been legally established.
5. In the event of default in payment of a claim, we shall be entitled to withhold the deliveries or other services from all contracts with the customer until all claims to which we are entitled against the customer have been settled in full. After fruitless expiry of a payment deadline set for the customer, SITEC shall be entitled to withdraw from all contracts not yet executed. We reserve the right to assert further claims for damages caused by default.
6. Subject to the assertion of further claims for damages, interest shall be charged on amounts owed which are in default of payment at 9 percentage points above the respective base interest rate of the Deutsche Bundesbank.
7. Incoming payments that are not assigned to a specific invoice number are always credited to the oldest debt.

8. Invoice amounts are payable within 30 days of the invoice date without deduction and, unless otherwise agreed, in EURO, unless other terms have been agreed. Timely payment depends on the receipt of the amount at our unconditional disposal. Failure to comply with the payment deadline and incomplete payment shall put the customer in default even without a reminder.

§ 4 Geistiges Eigentum und gewerbliche Schutzrechte:

1. An den zum jeweiligen Angebot gehörenden Unterlagen, wie z.B. techn. Zeichnungen, Abbildungen, Prospekte und dergleichen – auch in elektronischer Form –, die von uns erstellt bzw. entwickelt worden sind, behalten wir uns das Eigentum und Urheberrecht vor. Sie dürfen Dritten nicht zugänglich gemacht werden, es sei denn, wir erteilen dazu dem Besteller unsere ausdrückliche schriftliche Zustimmung.

Nach Kündigung oder Widerruf eines Auftrags erlöschen alle Nutzungsrechte für alle von SITEC bereitgestellten Unterlagen, Dokumente, sonstiger Daten und Informationen. Auf Verlangen von SITEC sind alle Unterlagen vollständig und umgehend an uns zurückzuschicken oder zu vernichten, wenn dies von SITEC gewünscht wird.

Software-Quellcodes und Konstruktionsdaten sind grundsätzlich kein Teil des Angebotes und werden nicht mitgeliefert. Nutzungsrechte für Software sind in einem separaten Software-Lizenz und Nutzungsvertrag geregelt.

§ 5 Transfer of risk - liability for defects - claims for damages:

1. Shipment shall always be at the customer's own risk and, unless otherwise agreed, at the expense of the customer. The risk of accidental loss or accidental deterioration of the goods shall in any case pass to the customer upon delivery of the goods to the carrier, but at the latest when the goods leave our works. In the case of transportation by our vehicles and employees, all risk shall pass to the customer upon completion of the loading process. In the event of a delay in delivery for which we are not responsible, all risk shall pass to the customer on the day on which the goods are ready for dispatch.
2. Warranty rights of the purchaser presuppose that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code).
3. The customer is obliged to inspect the properties of the goods relevant for the respective use for obvious defects immediately after delivery and to notify us immediately in writing of obvious and/or recognized defects within eight days. The date of delivery or completed assembly by SITEC shall be deemed the date of acceptance.
4. Claims for defects for non-obvious defects shall become time-barred 12 months after delivery of the goods supplied by us to our customer. Our consent must be obtained before any return of the goods.

5. If, despite all due care, the delivered goods have a defect that already existed at the time of the transfer of risk, we shall, at our discretion, either repair the goods or deliver a replacement, subject to timely notification of defects. We must always be given the opportunity for subsequent performance within a reasonable period of time; if this is not done, we shall be released from liability for defects.
6. If the subsequent performance fails, the customer may - without prejudice to any claims for damages - withdraw from the contract or reduce the remuneration.
7. SITEC accepts no liability for damage and defects arising in particular for the following reasons:
 - Unsuitable or improper use
 - Incorrect assembly or commissioning by the customer or third parties commissioned by the customer
 - Natural wear and tear
 - Use of non-original SITEC spare parts and consumables
 - Incorrect or negligent handling
 - Unsuitable operating materials, cleaning agents
 - Defective construction work, unsuitable building ground
 - Chemical, electrochemical or electrical influences for which SITEC is not responsible.
8. There shall be no claims for defects in the event of only insignificant deviations from the agreed quality, e.g. minor deviations in dimensions, weight, thickness, color, anodizing and design, in the event of only insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials, defective construction work, unsuitable building ground or due to special external influences which are not provided for in the contract. If improper repair work or modifications are carried out by the customer or third parties, no claims for defects shall exist for these and the resulting consequences. SITEC shall not be entitled to claim reimbursement of costs incurred as a result of third-party work.
9. Claims of the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded insofar as the expenses increase because the goods delivered by us have subsequently been moved to a location other than the customer's branch office, unless the transfer corresponds to their intended use.
10. The customer may not refuse to accept the delivery due to existing defects.

§ 6 Other liability:

1. Unless otherwise stated in these GTC including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only...
 - a) for damages resulting from injury to life, body or health.
 - b) for damages arising from the breach of an essential contractual obligation (obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
 - c) The limitations of liability resulting from paragraph 2 shall also apply in the event of breaches of duty by or in favor of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act.

§ 7 Delivery times and delivery periods:

1. Unless the order confirmation expressly states otherwise, the delivery dates stated are non-binding and SITEC will endeavor to meet them. However, no guarantee is given for compliance.
2. The delivery period shall commence upon receipt of the signed release drawing, technical clarification, the signed order confirmation and the down payment. The fulfillment of the delivery period requires the complete clarification of all execution details, including the provision of all necessary documents by the customer and the receipt of an agreed down payment due upon conclusion of the contract.
3. If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.
4. The agreed delivery period shall be extended, without prejudice to our rights arising from delay, at least by the period required by the customer to fulfill his obligations under this contract. Thereafter, a delivery period shall depend on the capacities available at SITEC.
5. If SITEC fails to comply with a fixed delivery period expressly agreed in writing, the customer shall be entitled to set a reasonable grace period in writing. If SITEC fails to meet the fixed delivery deadline including the grace period, the customer shall be entitled to the statutory rights and may withdraw from the contract. At our request, the customer shall be obliged to declare within a reasonable period of time whether he will demand performance of the contract by SITEC despite the delay in delivery or whether he will refuse performance due to the delay.

6. A delay in delivery caused by circumstances or events for which SITEC is not responsible, e.g. traffic or operational disruptions, shortage of raw materials or energy, strike or lockout as well as force majeure, shall release SITEC from the obligation to deliver for the duration of the hindrance and a reasonable start-up period, even if they occur at our suppliers or sub-suppliers, insofar as they have a demonstrable influence on the completion or delivery of the delivery item. If the performance of the service becomes impossible for SITEC due to the aforementioned circumstances, SITEC shall be entitled to withdraw from the contract in whole or in part.
7. If a delay in shipment occurs at the customer's request or for reasons for which the customer is responsible, we shall charge the storage costs, starting one month after notification of readiness for shipment, at least 0.5% of the invoice amount for each month or part thereof in the case of storage in our factory. The assertion of further rights arising from default shall remain unaffected by this. SITEC also reserves the right to withdraw from the contract and/or to claim damages. The payment terms agreed in the contract and the resulting payment obligation remain unaffected.
8. If the customer refuses delivery even after a reasonable grace period has expired, we shall be entitled, without prejudice to other claims, to claim liquidated damages for non-performance in the amount of 100% of the purchase price of the hardware. The customer reserves the right to prove that SITEC has suffered no or only minor damage. Our right to claim proven, higher damages remains unaffected.

§ 8 Reservation of ownership:

1. We reserve title to the goods delivered by us as well as to any items resulting from their treatment and processing until all our present and future claims against the customer arising from the business relationship, including conditional and time-limited claims, irrespective of their legal basis, have been satisfied in full. The secured claims include in particular the purchase price claim. The secured purchase price claim in the aforementioned sense also includes the expenses incurred in connection with the conclusion and execution of the purchase contract, the maintenance of the object of purchase and the assertion of the rights to the object of purchase reserved to us. These are in particular Costs of acceptance, shipment, packaging as well as interest on arrears and interest on arrears, costs for adjustment, accommodation and insurance as well as those costs incurred in the judicial or extrajudicial assertion of our rights. If it is a legal transaction with an entrepreneur, we are entitled to assert the rights arising from the retention of title without withdrawing from the contract if the customer is in default of payment.

2. As long as ownership has not yet been transferred to him, the customer is obliged to treat the purchased item with care and to keep it safe. As long as ownership has not yet been transferred, the customer must inform us immediately in writing if the delivered item is seized or exposed to other interventions by third parties. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the loss incurred by us.
3. If the customer does not fulfill his contractual obligations towards us, we are otherwise authorized to demand the return of the reserved goods; the customer has no right to possession in this respect. If the goods are taken back, all costs, including those of a new delivery, shall be borne by the customer. In the aforementioned case, the customer must compensate for any reduction in value, even if it is not at fault. SITEC reserves the right to assert further claims for damages. SITEC shall be entitled at any time to satisfy itself as to the condition and existence of the goods subject to our reservation of title and for this purpose to have a person authorized by SITEC enter the relevant storage rooms of the customer. SITEC must be granted access to the books for goods that have been resold under extended retention of title. The sale of goods subject to retention of title is not permitted without the prior written consent of SITEC.
4. If the reserved goods are sold by the customer together with his own goods or goods of third parties, e.g. software, in an unprocessed condition, the customer shall assign to us the claim resulting from the resale in the amount of the value of the reserved goods. If the portion of the purchase price attributable to the sale of our reserved goods is higher than the value of our reserved goods, we shall also be entitled to the excess amount.
5. If the goods subject to retention of title are processed, we shall be deemed to be the manufacturer and shall acquire ownership of the new item without any claims accruing to the customer from this transfer of rights. If the processing is carried out together with other materials, we shall acquire co-ownership of the manufactured item in the ratio of the gross invoice value of the goods subject to retention of title to that of the other materials.
6. In the event that the contracts concluded by the customer in the context of the resale of the reserved goods are invalid or void, the customer hereby assigns to us the statutory claims to which he is entitled instead of the assigned contractual claims, in particular claims for enrichment, to the same extent.
7. If and to the extent that registration and/or the fulfillment of other requirements are prerequisites for the effectiveness of the retention of title, the customer shall be obliged to take all necessary actions and make all necessary notifications without delay and at its own expense.
8. SITEC undertakes to release the goods subject to retention of title and the items or claims taking their place to the extent that their value exceeds the amount of the secured claims by more than 20%.

9. The costs of the return transportation of the reserved goods shall be borne by the customer, e.g. in the event of termination of the contract/contract dissolution in the event of revenue sharing.
10. In the event that the customer's liabilities are settled by participating in the direct debit procedure, all our rights arising from the retention of title regulated above shall remain in force until such time as it is no longer possible to revoke the direct debits, unless our rights already remain in force anyway on the basis of the above provisions.

§ 9 Miscellaneous:

1. The place of performance and exclusive place of jurisdiction for all disputes arising from this contract is the registered office of SITEC GmbH in D-96369 Hummendorf, unless otherwise stated in the order confirmation. This shall not apply if the customer is a company not entered in the commercial register.
2. In the event that individual provisions of this agreement are or become invalid or unenforceable in whole or in part, or in the event that this agreement unintentionally contains loopholes, this shall not affect the validity of the remaining provisions of this agreement.

In place of the invalid, unenforceable or missing provisions, such a valid and enforceable provision shall be deemed to have been agreed between the parties as the parties would have agreed, taking into account the economic purpose of this agreement, if they had been aware of the invalidity, unenforceability or absence of the provision in question when concluding this agreement. The parties are obliged to confirm such a provision in the appropriate form, but at least in writing.

3. This contract and all legal relationships between the parties are subject to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).