

Terms and Conditions of Sale and Supply of Aconity3D GmbH

§ 1 Scope of application

- (1) All supplies of goods and services as well as quotations by Aconity3D GmbH ("Seller") are governed exclusively by these General Terms and Conditions of Sale and Delivery ("Terms and Conditions"). Unless we have expressly consented to them in writing, we will not recognise Terms and Conditions of the Purchaser which conflict with or deviate from our own Terms and Conditions. The foregoing will not affect any individually stipulated agreements.
- (2) These Terms and Conditions are only intended for use with persons who at the time of contracting carry on a trade or who carry on business as an independent contractor or which are legal persons governed by public law or are special funds governed by public law.

§ 2 Quotations & conclusion of contract

- (1) All quotations provided by the Seller are non-binding and subject to change without notice unless they are expressly identified as binding or they contain a specific acceptance deadline. After an order has been placed by the Purchaser, a contract with the content found in the Seller's written order confirmation is concluded when the Seller confirms the order
- (2) All quotations from the Seller are conditional upon its receipt of any necessary foreign trade or export permits from the competent authorities.
- (3) All agreements between the Seller and the Purchaser regarding the performance of the contract are incorporated into the contract in writing.
- (4) Any additions or amendments made to the agreements reached or to these Terms and Conditions must be made in writing and must bear an original signature in order to be effective. No employees of the Seller other than its directors or authorised signatories are permitted to make oral agreements that deviate from the terms hereof.
- (5) Any statements by the Seller as regards the goods or services delivered (e.g. weights, dimensions, consumption values, load-capacity, tolerances and technical data) or representations thereof (e.g. drawings and illustrations) are only to be considered approximations unless use for the purpose contemplated under the contract requires strict compliance with such statements. The Seller reserves the right to make changes – even after the conclusion of contract – to its goods and

services if these are customary in the trade or necessary due to legal requirements or technical improvements, and to replace component parts with equivalent parts provided that this does not interfere with the use of the products for the agreed purpose.

- (6) The Seller reserves ownership of and copyright in all of the quotations and bids that it makes as well as ownership of and copyright in the drawings, images, calculations, brochures, catalogues, models, tools and other documents and aids that it makes available to the Purchaser. Unless the Purchaser has obtained the Seller's express consent, it may neither make the items themselves nor their content available to third parties. It is also prohibited from making such items public and from using or reproducing them itself or via a third party. Upon request from the Seller, the Purchaser must return the items in full and must destroy any copies it has made if it no longer requires the items in the ordinary course of business or if negotiations for a contract fail.
- (7) The contract is concluded subject to the proviso that the Seller's suppliers deliver their goods and services to the Supplier in full and on time. This proviso does not apply to short-term defaults in delivery or in those cases in which the Seller is responsible for its failure to deliver. Consequently, it only applies in those cases in which the Seller, in spite of having entered into a contract to buy the relevant goods, is through no fault of its own unable to obtain them. The Seller will notify the Purchaser without delay if the goods are not available. Any payments which the Purchaser has already made will be immediately refunded.

§ 3 Prices and payment terms

- (1) The prices apply to the goods and services included in the order confirmation. The cost of any additional or special work will be invoiced separately. The prices quoted are euro prices for delivery ex works the Seller. They do not include value-added tax, packaging, shipping or freight costs or, in the case of exports, customs duties, charges or other public levies.
- (2) Insofar as agreed prices are based on list prices of the Seller and delivery is scheduled for a point in time more than four months after the conclusion of the respective contract, the list prices of the Seller which are in effect as of the date of delivery will apply (in each case, less any agreed percentage or fixed rebates).
- (3) Except as otherwise agreed in writing, invoice amounts must be paid in full within 8 days of the invoice date. The relevant date for determining whether payment is punctual is the date that payment is received by the Seller. Where the Purchaser fails to pay by the due date, interest on the outstanding amount will be payable at the rate of 9% above the base interest rate.

- (4) The Purchaser only has a right of set-off if its counterclaims have been adjudged non-appealable, are undisputed or are recognised by the Seller. This does not apply to counterclaims by the Purchaser from the same contractual relationship. The Purchaser is only entitled to exercise rights of retention arising from the same contractual relationship.
- (5) Where the Seller has a duty to tender performance first, the Seller will be entitled to delay its performance until such time as the Purchaser's payment has been made or security for same has been provided if after the conclusion of contract the Purchaser's financial circumstances deteriorate so significantly as to endanger the Seller's claim for payment or if the Seller becomes aware that the Purchaser's liquidity is not adequate or if the Purchaser made false statements about its creditworthiness at the time of contracting. Where, in spite of a request from the Seller containing a reasonable deadline for compliance, the Purchaser is unwilling to effect payment or to provide security reciprocally and simultaneously with delivery of the goods by the Seller, the Seller will be entitled to rescind the contract. The Seller expressly reserves the right to claim damages in such case.

§ 4 Delivery and delivery dates

- (1) Unless a fixed delivery period or date for delivery has been promised or agreed, delivery periods and dates indicated by the Seller for goods and services are only approximations. The stated delivery time does not begin to run until all (technical) questions have been resolved. If it was agreed that the Purchaser would pay a deposit, the delivery time does not begin to run until payment has been received. In addition, the Seller's compliance with its delivery obligation is conditional upon the Purchaser's timely and proper performance of its obligations. The Seller reserves the right to plead failure by the Purchaser to perform under the contract. The delivery deadline is met if, before it has expired, the item has left the factory or if the Seller has given notice that the item is ready for shipment.
- (2) Where a non-binding delivery period or delivery date has been exceeded by six weeks, the Purchaser may request the Seller to deliver. Upon receipt of such request, the Seller will be in default. If the Purchaser is entitled to damages for default based on the Seller's ordinary negligence, its claim will be limited to no more than 5% of the agreed purchase price.

If, in addition, the Purchaser wishes to rescind the contract and/or demand damages in lieu of performance, it must, after the expiry of the deadline pursuant to sentence 1 of subsection 2, set the Seller a reasonable deadline for delivery. In the event of ordinary negligence on the part of the Seller, the Purchaser has no right to damages in lieu of performance. If, by chance, delivery becomes impossible while the Seller is in default, it will be liable within the agreed limits mentioned above. The Seller will not be liable in circumstances where the damage would have occurred even if the delivery had been punctual.

- (3) If a binding delivery period or date is exceeded, the Seller will be in default as soon as same occurs. In such case, the rights of the Purchaser will be governed by subsection 2 of this section.
- (4) The limitations on liability in this section do not apply to a claim for damage which is due to gross negligence or intentional wrongdoing on the part of the Seller, or of its legal representatives or vicarious agents, and do not apply in the event of injury to life, limb or health.
- (5) If the Purchaser fails to accept delivery or if it intentionally or negligently breaches other duties to cooperate, the Seller will be entitled to demand compensation for the resulting loss or damage which it has incurred, including compensation for any additional expenses. In particular, the Seller is entitled to claim, for each full week of storage, storage costs in the amount of 0.25% of the invoice amount of goods that it stores. The aggregate of such storage costs may not exceed 15% of the invoice amount. The storage costs will be increased if the Seller proves that the damage incurred was higher or reduced if the Purchaser proves that the damage incurred was lower. The Seller reserves the right to assert further rights or claims.
- (6) If force majeure or business disruptions affect the Seller or its suppliers such that the Seller, through no fault of its own, is temporarily unable to perform its services by the agreed date or within the agreed period of time, the dates and time periods for delivery specified in subsections (1) to (3) of this section will be extended by the duration of the disruption to business caused by such circumstances. If such disruption results in the postponement of delivery by more than four months, the Purchaser may rescind the contract. The foregoing is without prejudice to any other rights of rescission.
- (7) The Seller is only entitled to deliver goods in instalments if
 - delivery in instalments was expressly agreed between the parties or
 - goods delivered in instalments can be used by the Purchaser for the purposes of the contract
 - the delivery of the remainder of the goods ordered is guaranteed and
 - this does not result in higher or additional costs for the Purchaser (unless the Seller has agreed to assume these costs).

§ 5 Passing of risk, shipping, packaging and insurance

- (1) Delivery is ex works.

- (2) The risk of accidental loss or deterioration of the goods passes to the Purchaser at the time when they are handed over to the freight forwarder, including in cases where carriage paid delivery has been agreed. This also applies where deliveries are made in instalments or where the Seller has assumed additional tasks (e.g. shipping or installation). If, for reasons for which the Purchaser is responsible, the dispatch of the goods is delayed, risk will pass as soon as the Seller has given notice that the goods are ready for shipment.
- (3) Unless the parties have expressly agreed otherwise, the Seller may, in exercise of its due discretion, decide on the type of shipping and packaging.
- (4) The Seller will only insure the shipment against theft, breakage, transport damage, fire or water damage or other insurable risks if expressly requested to do so by the Purchaser and where the Purchaser assumes the costs.

§ 6 Acceptance

- (1) Where the contract or the law provides for the Purchaser to accept the equipment, this is deemed to occur when delivery has been completed and, insofar as the Seller is required to install the equipment, the installation has been completed, and the Seller has set the Purchaser a reasonable time limit for acceptance and the Purchaser has not refused acceptance within this period by claiming that the equipment has at least one defect.
- (2) If Acceptance is prevented by the Customer, the system is deemed to be accepted 6 (six) weeks after delivery. At this time, open payments in accordance with Acceptance become due. Independent from the status of Acceptance and open payments, Supplier owes the acceptance procedure to Customer, once a suitable date is agreed upon by both parties.
- (3) If the Purchaser uses the item (e.g. commissions the equipment delivered), this will also be deemed acceptance if six working days have elapsed since the delivery or installation and the Purchaser has not refused acceptance within this period by claiming that the equipment has at least one defect.
- (4) A minor defect does not constitute grounds for refusal of acceptance.

§ 7 Rights to the item delivered

The Purchaser will receive physical ownership of the item delivered and the documentation. The intellectual property rights to the item delivered and the documentation may only be transferred by special written agreement.

§ 8 Warranties

- (1) To the extent that this is possible in the ordinary course of business, the Purchaser must examine the item delivered without delay following delivery and must, if it finds a defect, notify the Seller of this without delay or, at the latest, within three working days. If the Purchaser does not notify the Seller of any defects, the item delivered will be deemed accepted unless the defect was such that it could not be discovered at the time of the examination.
If the defect becomes evident at a later time, the notice of defect must be given without delay, or at the latest, within three working days from the discovery of the defect; otherwise, the item delivered will be deemed accepted notwithstanding the defect. These rules do not apply if the Seller has fraudulently concealed the defect.
- (2) Unless expressly agreed otherwise in an individual case, statements regarding goods or services are not guarantees as to quality, but are merely descriptions or designations of the goods or services. The Seller warrants that the item delivered conforms with the product description and any other agreed contractual terms. The Seller's warranties do not apply if damage results from the incorrect use of the item, or from omissions by the Purchaser or its employees or vicarious agents, or if damage results from a failure to follow operating or other instructions.
- (3) If the item delivered is defective, the Seller may, at its option, cure the defect by either repair or replacement. Title to any products and parts replaced will revert to the Seller.
- (4) If the Seller does not comply with its obligation to cure the defect within a reasonable deadline, or if it fails to cure the defect despite repeated attempts to do so, the Purchaser will be entitled to reduce the purchase price or to rescind the contract. Further claims, in particular claims for reimbursement of expenses or claims for damages for defects or consequential damages may only be brought within the limits specified in § 9 of these Terms and Conditions.
- (5) Statutory warranties no longer apply if the Customer itself makes or has a third party make changes to the item delivered without the Seller's permission, and it thus becomes impossible or unreasonably difficult for the Seller to cure the defects. In any event, the Purchaser will be responsible for any increase in the cost of curing the defect that arises due to the changes made.
- (6) Claims by the Purchaser for defects in quality will become time-barred within one year from the date of delivery or, where acceptance is required, from the date of acceptance. The statutory limitation period for rights of recourse pursuant to § 478 and § 479 of the German Civil Code will remain unaffected.
- (7) If, by way of exception, the Seller agrees to deliver second-hand goods in an individual case, no statutory warranties will apply.

- (8) The reduction in the limitation period pursuant to subsection (6) and the exclusion of liability for defects in quality pursuant to subsection (7) do not apply to claims for damages for defects in quality (e.g. if there is a breach of the duty to cure a defect), which are due to gross negligence or intentional wrongdoing on the part of the Seller, or of its legal representatives or vicarious agents, and do not apply in the event of injury to life, limb or health. The statutory warranty periods apply to such claims.
- (9) The foregoing provisions do not affect the Seller's liability under any guarantees as to quality or durability or its liability for fraudulent concealment of defects.

§ 9 Liability

- (1) Where these Terms and Conditions provide that the Seller is liable by law for damage caused by ordinary negligence, the Seller's liability will be limited. Its liability will be limited to the breach of material contractual obligations (i.e. those which the contract, in view of its purpose and content, seeks to impose on the Seller and whose fulfilment is of the very essence for the proper implementation of the contract and, upon whose fulfilment, the Purchaser regularly relies and may rely) and to damage that was foreseeable at the time that the contract was concluded.
- (2) Irrespective of any fault on the part of the Seller, its liability in the event of the fraudulent concealment of a defect, or from the assumption of a guarantee or of the procurement risk, or under the German Product Liability Act (*Produkthaftungsgesetz*) will remain unaffected.
- (3) Liability for late delivery is conclusively regulated in § 4.
- (4) Personal liability on the part of the Seller's legal representatives, vicarious agents and employees for damage caused by ordinary negligence on their part is excluded.
- (5) The limitations on liability in this section do not apply in the event of injury to life, limb or health.

§ 10 Proprietary rights of third parties

- (1) The Seller will defend the Purchaser against any claims arising from an infringement of proprietary rights or copyright by the item delivered or its accompanying documentation in the Federal Republic of Germany or at the place of delivery. The Seller will assume – insofar as it is at fault – any costs or damages awarded by a court if the Purchaser notifies the Seller of any such claims in writing without delay, does not acknowledge the alleged infringement and either allows the Seller to defend against such allegations (including to conclude out-of-court settlements) or only defends such allegations in consultation with the Seller.

- (2) If the Purchaser ceases to use the item delivered in order to mitigate damage or for other important reasons, it will be obliged to inform the third party that the discontinuation of use does not constitute acknowledgment of the alleged intellectual property infringement.
- (3) In the event that any claims are brought against the Purchaser pursuant to subsection (1), the Seller may, at its own expense, modify or replace the item delivered in a manner that the Purchaser may reasonably be expected to accept. If it is not possible to obtain, with reasonable effort, a right to use the item, either party may rescind the contract. In such case, the Seller will reimburse the Purchaser for the remuneration paid less an amount for the period of use of the item delivered.
- (4) All further claims by the Purchaser for infringement of proprietary rights are excluded. This does not apply in the event of gross negligence or intentional wrongdoing or in the event of injury to life, limb or health.

§ 11 Technical information

- (1) The Seller's operating instructions and maintenance plans constitute general guidelines. They are based on the Seller's practical experience and have been prepared to the best of its knowledge. Due to the variety of ways in which individual products can be used as well as the special circumstances/working conditions in each case, it will be incumbent upon the Purchaser to carry out its own tests.
- (2) Even where the Seller provides the Purchaser with technical support, the Purchaser will bear the risk in relation to the achievement of the intended purpose of the contract.
- (3) For the reasons mentioned above, except in the event of gross negligence or intentional wrongdoing, or in the event of injury to life, limb or health, the Seller will not be liable for the accuracy of the information in the operating instructions/maintenance plans or for any advice provided otherwise which is not a part of its contractual obligations. In this case, the provisions in § 9 apply.
- (4) In addition, the Purchaser will comply with the warning notices delivered together with the product.

§ 12 Retention of title

- (1) The Seller will retain title to the item delivered until all its claims under the contract have been satisfied. In addition, the Seller reserves title to the item delivered until it has received all payments arising from its business relationship with the Purchaser.

- (2) If the Purchaser breaches the contract, in particular if it is in default of payment, the Seller may retake possession of the item delivered. If the Seller retakes possession of the item delivered, this will constitute rescission of the contract. After retaking possession of the item delivered, the Seller may dispose of it; the proceeds of sale – less reasonable expenses for the sale – must be offset against the Purchaser's liabilities.
- (3) The Purchaser is obliged to treat the item delivered with good care; in particular, it must at its own expense take out adequate replacement value insurance to cover damage by fire, water or from theft. If maintenance and inspection work are necessary, the Purchaser must conduct such work in due time at its own cost.
- (4) If the item delivered is seized or otherwise subject to enforcement measures by a third party, the Purchaser must notify the Seller of this in writing without delay so that the Seller can institute legal action pursuant to § 771 of the German Code of Civil Procedure (*Zivilprozessordnung – ZPO*). If the third party is unable to reimburse the Seller for the court fees and extrajudicial costs pursuant to § 771 of the German Code of Civil Procedure, the Purchaser will be liable for the resulting loss to the Seller.
- (5) The Purchaser is not permitted to resell the goods subject to a retention of title.
- (6) If the Purchaser processes or transforms the item delivered, it will always be deemed to do so on behalf of the Seller. If the item delivered is processed with other items that do not belong to the Seller, the Seller will acquire co-ownership rights in the newly created item in the ratio of the value of the item delivered (final invoice amount, including VAT) to the value of the other items processed at the time of processing. In all other regards, the same rules apply to the newly created item as apply to the item that was delivered subject to a retention of title.
- (7) If the item delivered is inextricably commingled with other items that do not belong to the Seller, the Seller will acquire co-ownership rights in the newly created item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the value of the other items commingled at the time of commingling. If the items are commingled in such a way that the Purchaser's item must be seen as the main item, the parties hereby agree that the Purchaser will transfer a proportionate co-ownership share of the item to the Seller. The item so created in which the Seller has sole or co-ownership rights will be held in safe custody by the Purchaser on the Seller's behalf.
- (8) The Seller agrees to release at the Purchaser's request the securities held if the realisable value of the securities exceeds the value of the secured claims by more than 10%; the Seller may choose which securities it wishes to release.

§ 13 Confidentiality

- (1) During the term of the contract and for a period of five years from its termination, each party will treat confidentially and not allow third parties to access any technical or business information that must be kept confidentiality and which the other party has disclosed to it.
- (2) The duty of confidentiality does not apply to information (i) that was already known to the other party without an obligation of confidentiality, (ii) that was or becomes publicly available without the fault of the respective other party, (iii) that is lawfully disclosed to a party by a third party without restriction as to disclosure, (iv) that was demonstrably developed independently by the other party, or (v) whose release has been authorised by the other contracting party in writing.

§ 14 Final provisions

- (1) No rights or duties under the contract may be assigned to a third party without the express consent of the Seller.
- (2) If the Purchaser is a merchant, public-law entity or special fund under public law, the courts at the Seller's place of business will have jurisdiction; the Seller will, however, also be able to take legal action against the Purchaser before the courts at its place of domicile.
- (3) The law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- (4) In the event that an individual provision of these Terms & Conditions is or becomes invalid or void, or if the parties mutually agree not to implement a provision, this will not affect the validity of the remaining provisions hereof. The same applies in the event of any omissions in these Terms and Conditions. The invalid or unenforceable provision or the omission will be replaced with the provision which is as close as legally possible in its commercial intent to the provision that it is replacing.

Current at: 05/2023