

General Terms and Conditions of Sale and Delivery



of SAWATEC AG, Eschagger 2, CH-9468 Sax, hereinafter referred to as "SAWATEC".

1. General

1.1 The following General Terms and Conditions of Sale and Delivery of SAWATEC AG shall apply for all sales, deliveries and services of SAWATEC to the customer and the resulting mutual legal relationships subject to different agreements in writing.

1.2 General terms and conditions of the customer shall apply as not agreed and shall be invalid. The General Terms and Conditions of SAWATEC shall apply exclusively for the contract; general terms and conditions of the customer shall not become contents of the contract, even if they are not expressly contradicted.

1.3 Unless a regulation was established in these General Terms and Conditions, the general terms and conditions of the customer shall not apply, but the legal regulation shall apply.

1.4 Subsidiary agreements, alterations and supplements to the contracts concluded on the basis of these General Terms and Conditions shall be made in writing and require the confirmation of SAWATEC to become valid. This shall also apply for diverging clauses of the Incoterms 2000. The same shall apply for the waiver of these formal requirements. Subsidiary agreements made orally shall apply as not made and shall not have any legal effect.

2. Offer / Confirmation of order / Subsequent alterations made by SAWATEC

2.1 Offers by SAWATEC shall not be binding unless a validity period is expressly stated in the offer. After the expiry of the possible validity period, the offer shall no longer be valid. The contract between SAWATEC and the customer shall not be concluded until the written confirmation of order was issued by SAWATEC.

2.2 Orders of the customer received by SAWATEC without the prior offer by SAWATEC shall only become binding for SAWATEC if SAWATEC expressly confirms the order in writing. The same shall apply if the customer modifies an offer made by SAWATEC.

2.3 SAWATEC shall be entitled to carry out constructive alterations on the subject matter of the order in individual cases also after an order was made and a confirmation of order was given by SAWATEC, unless this is prevented by important reasons of the customer notified to SAWATEC. In case of shortage of raw materials, SAWATEC shall always be entitled to use other materials as far as the functionality of the product is not essentially limited by this, or to pass on the charges of corresponding surcharges in case of use of the originally intended raw materials.

3. Documentation

3.1 Specifications about products and components of SAWATEC in catalogues, brochures, booklets, on websites of SAWATEC, in other advertising messages, etc. shall constitute non-binding specifications, unless they are expressly assured by SAWATEC as special features of the product. Features of a product shall only apply as assured if an express assurance in writing was given to the customer by SAWATEC.

3.2 SAWATEC shall reserve property rights, copyrights and trademark rights in documents provided in any form by SAWATEC as far as possible. Documents being provided may not be used for a purpose other than the purpose determined by SAWATEC. Any copying, passing on, making available or other provision to third parties shall not be permitted. Reproduction of individual parts or entire facilities and components shall expressly be inadmissible and shall be legally prosecuted.

3.3 All documents, drawings, tools, patterns, models, brands, designs, software, documentations, etc. provided by SAWATEC shall be returned to SAWATEC on their demand. There shall be no need to this request for return if the order is not awarded to SAWATEC.

4. Prices, packaging, insurance

4.1 The prices shall be EXW (Ex Works SAWATEC in CH-9468 Sax, Eschagger 2; Ex Works SAWATEC, Switzerland, 9468 Sax, Eschagger 2; Incoterms 2000) excluding packaging, assembly, commissioning, training and process development.

4.2 All levies and taxes (e.g. value-added tax, etc.) shall be additionally charged by SAWATEC according to the provisions valid at the time of fulfillment of the contract.

4.3 The insurance of the ordered goods against risks of transport including breakages shall be the customer's responsibility.

5. Assembly and commissioning

As far as assembly, assembly monitoring or commissioning are to be carried out according to the contract, the corresponding conditions of SAWATEC shall additionally apply, which are provided by SAWATEC at request.

6. Passing of risk

According to the agreed clause EXW (Incoterms 2000), the risk shall be directly passed to the customer with the storage or delivery of the completed goods packed according to the order at the factory site of SAWATEC in CH-9468 Sax, Eschagger 2; the customer bearing all risks as of this time, including accidental loss of the subject matter and damage. This shall also apply in case of partial deliveries or if SAWATEC has carried out additional services, e.g. delivery to the customer or assembly.

7. Start of production and manufacturing

7.1 SAWATEC shall start with the production or manufacturing of the ordered goods or facilities not before the day on which all commercial and technical prerequisites for the fulfillment of the order are settled with the customer, all documents to be provided by the customer were received by SAWATEC, possibly required authorisations and releases were given and the agreed deposits were booked to a bank account of SAWATEC. The agreed delivery date shall extend for SAWATEC automatically by the occurred delay, which is the time between confirmation of order and discontinuation of the cause for delay.

7.2 After expiry of 4 weeks as of the confirmation of order issued by SAWATEC, SAWATEC shall in any case be entitled to declare withdrawal from the contract and claim damages, also in case of initial waiting with the production or manufacturing, after setting an appropriate grace period of further 2 weeks.

8. Fulfilment of order, delivery, acceptance, refusal to accept, other disposal of the goods in case of default of acceptance by the customer

8.1 The order shall be deemed as fulfilled and delivered to the customer with the storage or delivery of the completed goods packed according to the order at the factory site of SAWATEC in CH-9468 Sax, Eschagger 2. Place of performance shall be SAWATEC AG, Eschagger 2, CH-9468 Sax.

8.2 The contractually agreed delivery date shall be deemed kept if SAWATEC places or delivers the goods at the factory site of SAWATEC in Sax until 12 midnight at the agreed date. A separate notification by SAWATEC to the customer or a third party shall not be required.

8.3 Partial deliveries shall be permissible to a reasonable extent. Delivered items shall be accepted by the customer, also if they are defective.

8.4 If the customer refuses to accept the goods, SAWATEC shall be entitled to sue the customer for acceptance of the goods. The due date of the purchase price shall occur independent of the customer accepting the goods or SAWATEC suing the customer for acceptance of the goods.

8.5 In case of the customer's refusal to accept, SAWATEC shall furthermore be entitled to withdraw from the contract and to claim damages from the customer after setting and expiry of a reasonable grace period of 2 weeks as of storage or delivery of the completed goods at their factory site in CH-9468 Sax. In this case, SAWATEC shall be free to otherwise dispose of the delivery item. A different disposal of the item shall also include the right of SAWATEC to sell the item or the goods to a third party without the customer being entitled to claim damages from SAWATEC and/or demand the subsequent fulfillment.

8.6 Should the transport of the delivery item being in the sphere of the customer be delayed ex works SAWATEC Sax for reasons the customer or a third

party commissioned by them is responsible for, or should a transport not be performed in time due to another reason the customer is responsible for, SAWATEC shall be entitled, but not obliged, to store the delivery item at their reasonable discretion at the customer's risk and costs. The storage costs for storage in the works of SAWATEC shall however at least be 0.5% of the invoice amount for every month started as of the day of readiness for dispatch.

8.7 If the service on SAWATEC's part is delayed by force majeure, a reasonable extension of the delivery period shall apply, which however shall not exceed six months. Force majeure shall also include strikes, lock-outs, sabotage, shortage of raw materials or energy, operational breakdowns not due to somebody's fault, important work pieces becoming defective not due to somebody's fault, no grant or no timely grant of official authorisations as well as all other unforeseeable events.

9. Conditions of payment

9.1 Payment shall be made net and exclusively to one of the accounts of SAWATEC. They shall be made free of postage and expenses without any deductions on the due date at the latest; fees, expenses and other costs possibly incurred by SAWATEC by means of a separately agreed acceptance of bills or cheques shall be for the customer's account. Partial deliveries shall entitle SAWATEC to invoice the respective partial amount.

9.2 The date of the invoice shall apply for the determination of the due date. The due date shall be 7 days as of issue of the invoice, unless otherwise provided in the confirmation of order of SAWATEC or the contract.

9.3 All payments shall be made in the contractually agreed currency. In case of payment in a different currency, the receivables shall not be deemed as completely fulfilled until the amount of payment corresponds to the agreed currency amount on the invoice at the day of the payment receipt on the account of SAWATEC.

9.4 Payments of all types shall be deemed as fulfilled towards SAWATEC on the day when SAWATEC can actually dispose of the amount.

9.5 The retention of due payments due to asserted counterclaims as well as the set-off with due counterclaims shall only be admissible if the counterclaim is acknowledged by SAWATEC or is identified in a statutorily effective way.

9.6 In case of delay of payment, SAWATEC shall be entitled, without prejudice to further claims, to demand interest for delay in the amount of 8% over the respective bank rate of the Swiss National Bank (SNB). Furthermore, in case of delay of payment, all receivables of SAWATEC shall become due in cash, notwithstanding any bills and cheques accepted on account of performance.

10. Cancellation

In case of cancellation of the order by the customer, the customer shall pay the following cancellation costs, which depend on the time of the cancellation:

- ☐ 90% of the total price in case of cancellation within 30 days prior to the planned dispatch;
- ☐ 80% of the total price in case of cancellation from 31 to 60 days prior to the planned dispatch;
- ☐ 60% of the total price in case of cancellation from 61 to 90 days prior to the planned dispatch;
- ☐ 30% of the total price in case of cancellation from 91 to 120 days prior to the planned dispatch;
- ☐ 20% of the total price in case of cancellation from 121 to 180 days prior to the planned dispatch;
- ☐ 10% of the total price in case of cancellation longer than or equal to 181 days prior to the planned dispatch.

The due date of the amount cancelled shall be 30 days after cancellation. In case of delay, SAWATEC shall be entitled to claim interest for delay in the amount of 8% over the respective bank rate of the Swiss National Bank (SNB).

11. Reservation of title

11.1 The delivery item shall remain the property of SAWATEC until complete payment of all receivables of any kind resulting from the business relationship and existing at the time of invoicing, including additional receivables. As far as the validity of the reservation of title is connected with special formal requirements or other prerequisites in the state the customer is based, the customer shall provide for their fulfillment.

11.2 If the customer is in delay with payments, SAWATEC shall be entitled, without reminder, to take back the delivery item for security purposes as pledge. The assertion of the reservation of title as well as the seizure of the delivery item by SAWATEC shall not apply as withdrawal from the contract.

11.3 The customer shall be entitled to disposals of the delivery item within a proper course of business. Receivables the customer receives during the term of the reservation of title based on such legitimate disposal or illegitimate disposal shall be assigned to SAWATEC already now. The customer shall be authorised to collect the receivables, subject to the revocation of SAWATEC at any time.

11.4 SAWATEC shall be obliged to release securities they are entitled to on the customer's demand insofar as the value of the securities exceed the unsettled receivables to be secured by more than 20%.

11.5 If the delivery item is processed or connected, mixed or mingled with items not belonging to SAWATEC, SAWATEC shall be entitled to co-ownership in the new item in relation to the value of the delivery item to the other processed goods at the time of the processing, connection, mixing or mingling. If the customer acquires sole title by act of law, they shall grant SAWATEC an according co-ownership share and insofar store the subject matter for SAWATEC.

11.6 The customer shall immediately notify SAWATEC about seizures or other third party interventions.

11.7 The customer shall be obliged to sufficiently insure the delivery item against theft, breakage, fire and water damages during the reservation of title at their own expense as well as to take out a liability insurance with inclusion of processing damages and with deletion of the exclusion of tenancy agreements, lease agreements and contracts of loan for use and to proof this to SAWATEC on demand.

12. Warranty

The statutory warranty provisions with the following special regulations shall apply:

12.1 The warranty period shall be 12 months and for some selected products 36 months as of acceptance by the customer in the works of SAWATEC in Sax or, if acceptance in the works of SAWATEC does not take place, as of delivery in the works of SAWATEC, Sax.

12.2 For replacement parts and remedies, the warranty period shall be 3 months. If the warranty period for the original delivery item is longer, the warranty period for the replacement parts and remedies shall be valid until expiry of the warranty period of the delivery item.

12.3 In case of defects of the delivery items occurring due to a circumstance existing before passing of risk (e.g. constructional or material defect, non-existence of assured features), SAWATEC shall be entitled to remedy or replacement at their option.

12.4 SAWATEC shall not warrant for natural wear and tear, substitute materials and parts subject to stronger wear and tear or complicated operational conditions due to their material conditions or according to the method of use. Furthermore, SAWATEC shall not warrant for defects as consequence of chemical, electro-chemical or electric influences (unless they can be attributed to a fault of SAWATEC) and defects accrued by use of the delivery item or the facility not in accordance with the regulations.

12.5 If SAWATEC fails to remove a defect subject to their warranty obligation, or if further remedies are unreasonable for the customer, the customer may demand conversion or price reduction at their option.

12.6 Defects shall be immediately notified, but within 2 weeks as of the beginning of the warranty period at the latest. The notification of defects shall be made in writing. In the notification it shall be stated which defects were identified and if they were noticed immediately or not until further processing of the parts. SAWATEC shall be entitled to have the alleged defectiveness examined by their own employees.

12.7 To carry out all remedies and replacements seeming necessary for SAWATEC at their reasonable discretion, the customer shall grant SAWATEC the required time and give the authorisation to remedy/replacement; otherwise SAWATEC shall be released from any warranty.

12.8 Of the direct costs resulting from remedy or replacement, SAWATEC shall bear – as far as the objection turns out to be justified and the notification of defects took part properly and in due time – the costs for dispatch, yet only after talking to SAWATEC to determine the type of dispatch. All other costs shall be borne by the customer. Travel and accommodation costs accruing due to the remedy shall also be borne by the customer.

12.9 If the business transaction is a mutual trading transaction, the tightened provisions of art. 347 and art. 349 of the Allgemeines deutsches Handelsgesetzbuch (adHGB) [General German Commercial Code], LGBL. [state law gazette] 1997 no. 193 shall apply, which shall be expressly referred to. Accordingly, the following shall apply: Art. 347 adHGB:

If the goods are delivered from another site, the purchaser shall examine the goods immediately after their delivery as far as feasible according to proper course of business, and if such goods turn out not to be according to contract or law (art. 335), immediately inform the seller about it.

If they fail to do so, the goods shall be deemed as accepted, unless there are defects which were not visible during the immediate examination according to proper course of business.

If such defects are discovered afterwards, the notification shall be made immediately after the identification, otherwise the goods shall be deemed as accepted, also taking account of these defects.

Art. 349 adHGB:

The defect of the contractual or lawful quality of the goods cannot be asserted by the customer if such defect was identified only after expiry of six months as of delivery to the purchaser.

The claims against the seller due to defects shall become statute-barred six months after delivery to the customer.

The objections shall be expired if the immediate dispatch of the notification of the defect did not take place within six months after delivery to the customer, as provided in art. 347. If the notification took place in this way, the objections shall remain existent.

13. Liability for infringements of industrial property rights

13.1 Unless a special note is given by SAWATEC, the delivery item shall be free of third party industrial property rights according to SAWATEC's knowledge. Further liability, particularly for procedures, applications, products, etc. shall not be assumed by SAWATEC.

13.2 If the drawings, documentations (software and hardware) or other information presented by the customer infringe third party industrial property rights, the customer shall be responsible for the infringement and shall indemnify SAWATEC and hold them harmless from any claims in case of assertion.

13.3 Should the delivery item infringe third party industrial property rights or procedural rights at the time of conclusion of the contract, SAWATEC shall be entitled to either obtain the right to use for the customer or to alter the delivery item or the procedure in a way that infringement is cured. For the last-mentioned case, the regulation according to 11.3 shall apply accordingly.

14. Exclusion of liability

14.1 SAWATEC shall only be liable for defects on the goods themselves. The customer shall only be entitled to claims for damages due to possible consequential damages if an expressly assured feature is not existent and if the risk of the occurred consequential damage was supposed to be excluded especially by this assurance. Further claims of the customer, no matter for what legal ground, shall be excluded.

14.2 The company shall only be liable for damages outside the scope of application of the Product Liability Act within the statutory provisions as far as intent or wilful gross negligence can be proven. The liability for slight and gross negligence, the replacement of consequential damages and property damages, non-productive time and loss of earnings, loss of production, lost profit and for damages from claims of third parties against the customer shall be excluded to the extent statutorily admissible as far as possible.

14.3 Furthermore, claims for damages shall be limited to the amount of 1.5 times the purchase price of the purchased items.

14.4 The present regulation shall also apply in favour of the employees and shareholders of SAWATEC.

15. Severability clause

Should individual or several provisions of the General Terms and Conditions of Sale and Delivery be ineffective or become invalid or should the Terms and Conditions contain a loophole, this shall not affect the validity of the remaining provisions. The invalid provisions shall be construed or replaced in a way that comes closest to the economic purpose intended.

16. Place of jurisdiction, applicable law

16.1 The place of jurisdiction shall be in accordance with the mandatory statutory provisions. As long as such do not apply, Mels shall be exclusive place of jurisdiction and the place where all procedures and settling of disputes are performed. SAWATEC shall also be entitled to sue the customer at their site.

16.2 All legal relationships of the customer with SAWATEC and all disputes resulting from the contractual relationship in this connection, including but not limited to actions on a bill or cheque, shall be subject to the laws of Switzerland. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded; furthermore, the international and swiss conflict of laws provisions shall be excluded in case of contracts with foreign relations.

16.3 The German version of the General Terms and Conditions shall be applicable.

Note

It shall be pointed out that SAWATEC has stored data of the customer and that these data will be processed.

SAWATEC AG
Sax, in April 2016