

General Terms and Conditions of the Company SAERTEX® GmbH & Co. KG

§ 1 Bases of Contract

1. The sale and delivery shall be exclusively subject to the following General Terms and Conditions of the Company SAERTEX® GmbH & Co. KG, Brochtraberger Damm 52, 48369 Saerbeck (hereinafter referred to as "SAERTEX"). These General Terms and Conditions are also applicable to all future transactions, even if they are not referred to in the specific case.
2. To become effective, amendments and additions to the Contract as well as collateral agreements shall be subject to written confirmation by SAERTEX. A waiver of this form requirement must also be in writing. General terms and conditions of the Customer shall not become subject matter of the Contract, even if SAERTEX does not expressly object thereto.

§ 2 Place of Performance

Unless otherwise stated in the order acknowledgement, the principal place of business of SAERTEX shall be the place of performance.

§ 3 Place of Jurisdiction and Applicable Law

1. Amtsgericht [Local Court] Ibbenbüren or Landgericht [Regional Court] Münster shall be the place of jurisdiction (also for legal action based on a cheque or a bill of exchange) for merchants, legal entities under public law or special assets under public law. However SAERTEX shall be entitled to also take legal action against the Customer at the court that has jurisdiction over its domicile.
2. The law applicable in the Federal Republic of Germany shall be exclusively applicable. Application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG, BGBL 1989 II, p. 588, amended 1990 II p. 1699) is excluded.

§ 4 Tender, Conclusion of Contract and Subject Matter of Contract

1. If the purchase order is to be described as a tender pursuant to Section 145 BGB [German Civil Code], SAERTEX may accept this tender within 4 weeks.
2. SAERTEX reserves ownership rights and copyrights in illustrations, drawings, calculations, data and other documents. They may not be made accessible to third parties. This particularly applies to information and written documents referred to as confidential. The Customer shall require the express written consent of SAERTEX prior to passing these on to a third party.
3. Drawings, illustrations, dimensions, weights, advertising statements or other performance data shall only be binding, if this is expressly agreed upon in writing. Such information shall not be considered guarantees of quality.
4. Block orders shall be permissible and must be limited as to time upon conclusion of the Contract. Unless otherwise individually agreed, the period allowed for acceptance shall be no longer than 12 months.

§ 5 Technical Advice on Applications

1. Technical advice on applications, for example in installation instructions, operating instructions etc., shall be given by SAERTEX to the best of its knowledge. All statements and information on the suitability and application of goods of SAERTEX shall not release the Customer from its duty to itself check and test the suitability of the products for the intended methods and purposes. Such information shall not be binding and shall in principle not establish a contractual legal relationship or additional obligations out of the Supply Contract, unless otherwise expressly agreed in writing. Subconditions 2 and 3 below are applicable to such exceptions.
2. SAERTEX shall only be liable for technical advice on applications in the event of intent or gross negligence. This applies without limitation to advice in connection with the application of new product developments. In other cases SAERTEX shall also be liable for ordinary negligence, but only in the event that a material contractual duty is breached, whereby liability for lost profit, damages arising from third-party claims against the Customer and for other consequential damages is excluded.
3. Unless SAERTEX is guilty of an intentional breach of Contract, liability for damages shall in all other respects be limited to foreseeable damages typically occurring.

§ 6 Delivery and Performance Period, Default

1. The commencement of the delivery period quoted by SAERTEX shall be subject to the clarification of all technical issues.
2. Dates and periods quoted by SAERTEX shall not be binding, unless otherwise expressly agreed in writing. SAERTEX shall in principle not assume procurement risks.
3. Delays in delivery and performance due to force majeure and due to events that make it materially more difficult or impossible for SAERTEX to deliver (for example strike, lockout etc.) shall empower SAERTEX to defer the delivery and/or performance by the duration of the impediment plus an appropriate start-up period. This same applies accordingly, if the above impediments occur at suppliers of SAERTEX or their suppliers. Subcondition 7 is applicable in all other respects.
4. SAERTEX shall meet its duty to deliver on condition that SAERTEX itself is properly supplied in due time.
5. If SAERTEX has failed to effect a due performance as contractually agreed, the Customer may cancel the Contract and/or demand damages in lieu of the performance as a whole or the reimbursement of expenses incurred in vain, in so far as the breach of duty by SAERTEX is immaterial.
6. SAERTEX shall only enter into default after having been warned, unless otherwise stipulated by law or the Contract. To become effective, warnings given and time limits set by the Customer must be in writing.
7. The fulfillment of SAERTEX's obligations to deliver shall be subject to the timely and proper fulfillment of the Customer's obligations. The right to plea non-performance of the Contract shall remain reserved. SAERTEX shall be entitled to deliver and perform by instalments at any time.
8. In so far as SAERTEX fails to effect a due performance as contractually agreed, the Customer may cancel the Contract and, subject to a culpable breach of a contractual duty by SAERTEX and without prejudice to further prerequisites under subconditions below, may demand damages in lieu of performance or the reimbursement of expenses incurred in vain. A further prerequisite shall be that the Customer has set a reasonable period for performance or for attaining full compliance and this period has expired without having been met.
9. In connection with fixing a final deadline as per subcondition 8 above, the Customer shall be obliged to clearly state that, if the final deadline is not met, it shall refuse to accept the delivery and shall assert the rights resulting from subcondition 8 above against SAERTEX.
10. If the performance has already been partly effected, the Customer may only demand damages in lieu of the performance as a whole, in so far as its interest in the performance as a whole necessitates this. In this case it shall only be possible to cancel the entire Contract, in so far as the Customer provably has no interest in performance by instalments.
11. If SAERTEX enters into default for reasons attributable to SAERTEX, liability for damages in the event of ordinary negligence shall be excluded. The aforementioned limitation of liability shall not apply, in so far as default is due to the fact that SAERTEX has culpably breached a material contractual duty. In these cases SAERTEX's liability shall be limited to foreseeable damages typical of the Contract. In the event of an intentional breach of Contract attributable to SAERTEX, SAERTEX shall be liable in accordance with legal regulations. Damage claims of the Customer over and above this shall be excluded in all cases of late delivery, even if any final deadline that SAERTEX has set is not met. This shall not apply in cases of compulsory liability due to intent, gross negligence and physical injury. This does not entail a change in the burden of proof to the detriment of the Customer.
12. In the event of default in acceptance by the Customer and/or in the event of a breach of the Customer's other duties to co-operate, SAERTEX shall be entitled to assert statutory claims to which it is entitled. The risk of accidental loss and/or accidental deterioration of the purchase item shall pass to the Customer no later than at the time when the Customer defaults in acceptance.

§ 7 Interruption of Delivery Due to Force Majeure

War, insurrection, strike, lockout, lack of raw materials and/or energy and other unforeseeable exceptional events such as acts of sovereign powers, traffic disruptions, business interruptions through no fault of SAERTEX that last or are expected to last longer than one week shall release SAERTEX from its duty to deliver for the duration of the effect thereof or in the event of impossibility. If the disruption lasts longer than two months, either Party may withdraw from further performing the Contract giving two weeks' notice.

§ 8 Passage of Risk, Packaging

1. Unless otherwise stated in the order acknowledgement, delivery "ex works" is agreed. In the event that collection has been agreed, the risk of accidental loss and accidental deterioration of delivery items shall pass to the Customer at the time of notification of readiness for collection. In all other respects the risk shall pass to the Customer at the time when SAERTEX hands over the goods to the carrier. This shall also be the case, if SAERTEX carries out the transportation itself. SAERTEX shall choose the method of dispatch and the route. Additional expenses due to deviating wishes of the Customer shall be chargeable to the Customer. At the Customer's request SAERTEX shall effect transport insurance for the delivery. The Customer shall bear expenses incurred in this connection.
2. Transportation packaging and all other packaging in accordance with the Verpackungsvorordnung [Packaging Ordinance] shall not be taken back. Excluded from this are returnable containers such as for example pallets, transportation boxes etc. The Customer shall be obliged to take care of disposing of non-returnable packaging and wrapping at its own expense.

§ 9 Prices and Payments

1. The invoiced amount shall be payable by the due date without any deduction. The invoice shall be issued on the day on which the goods are delivered or made available. Additional deliveries and services shall be billed separately.
2. Unless otherwise stated in the order acknowledgement, SAERTEX's prices shall apply ex works.
3. Statutory value-added tax is not included in SAERTEX's prices. It shall be separately shown on the invoice at the statutory rate on the day of invoicing. The deduction of a cash discount shall be subject to special written agreement.
4. Unless otherwise stated in the order acknowledgement, the purchase price shall be due and payable net (without any deduction) within 30 days as from the invoice date.

5. If the Customer defaults in payments, SAERTEX shall be entitled to assert the rights arising from Section 288 BGB [German Civil Code].
6. The Customer shall only be entitled to offset, if its counterclaims have been declared legally valid, are undisputed or have been acknowledged by SAERTEX. Additionally the Customer shall only be authorised to exercise a right of retention, if its counterclaim is based on the same contractual relationship.
7. Cheques and bills of exchange, which SAERTEX reserves the right to accept, shall first be deemed a payment once they have been cashed / honoured. Any discount charges and bank charges shall be chargeable to the Customer.
8. The non-payment of due invoices from SAERTEX or other circumstances that indicate a material deterioration in the Customer's financial position after the conclusion of the Contract shall entitle SAERTEX to immediately render due all claims against the Customer based on the same legal relationship. Furthermore SAERTEX shall be entitled to make deliveries to the Customer dependent upon the prior settlement of any old outstanding liabilities of the Customer.

§ 10 Warranty

1. The Customer's warranty rights shall be subject to the condition that the Customer has duly met its obligations to inspect and give notice of defects pursuant to Section 377 HGB [German Commercial Code].
2. Once cutting or processing has commenced, every complaint due to patent defects shall be excluded.
3. Any deviation of quality, colour, width, weight etc. that is technically unavoidable may not be complained about. If the goods delivered by SAERTEX are mixed with third-party components, processed and/or used together with these, SAERTEX's warranty shall only apply, in so far as these components were provably faultless and suitable. The Customer shall ensure this by carrying out suitable tests.
4. The Customer's statutory claims under a right of recourse against SAERTEX shall only apply, in so far as the Customer has not reached with its customers an agreement that goes beyond statutory warranty claims.
5. In so far as the purchase item is defective through the fault of SAERTEX, SAERTEX shall first of all always be given the opportunity to attain full compliance within a reasonable period. SAERTEX shall be entitled to at its option remedy defects or deliver a replacement.
6. If SAERTEX fails to attain full compliance, the Customer may (without prejudice to any damage claims) cancel the Contract or reduce the purchase price. Claims of the Customer on account of expenses necessary for the purpose of attaining full compliance, particularly transportation expenses, travelling expenses, labour costs and the cost of materials, shall be excluded, in so far as expenses increase as a result of subsequently transporting the delivery item to a place other than the place of performance, unless this transportation is consistent with its intended use.
7. Warranty claims shall not exist in the event of an immaterial deviation from the agreed quality, an immaterial impairment of usability, normal wear and tear or damage that has occurred after the passage of risk due to improper or negligent handling, excessive use, unsuitable media or media not approved by SAERTEX, unsuitable operating resources and/or due to extraordinary external influences and/or damage that is not assumed under the Contract.
8. If product information and product instructions from SAERTEX are not followed, alterations of an impermissible kind are made to the products, components are exchanged or media not consistent with the original specifications are used, SAERTEX shall no longer be liable for defects of quality. Anything contrary hereto shall only apply, in so far as the case under warranty is provably not due to any of the aforementioned reasons for exclusion.
9. Claims on account of defects of quality shall become statute-barred after a 12-month period. The period shall commence at the time of passage of risk. The above provisions are inapplicable, in so far as longer periods are stipulated by law pursuant to Section 439 (1) no. 2 (Items for Buildings), Section 479 (Claims under a Right of Recourse) and Section 634 a (Building Defects) of the BGB [German Civil Code].
10. Unless otherwise provided below, claims of the Customer over and above this (on any legal bases whatsoever) are excluded. Therefore SAERTEX shall not be liable for damages not occurring on the delivery item itself. In particular SAERTEX shall not be liable for lost profit or other financial losses of the Customer.
11. SAERTEX shall be liable in accordance with legal regulations, in so far as SAERTEX culpably breaches a material contractual duty. In this case however liability for damages shall be limited to foreseeable damages typically occurring. In all other respects liability for damages is excluded. In this connection SAERTEX shall in particular not be liable for damages not occurring on the delivery item itself.
12. The above releases from liability shall not apply, in so far as damages were caused by intent or gross negligence. Furthermore they shall not apply in cases of physical injury and/or damage to a person's health and in cases where the Customer asserts damage claims on account of a given guarantee for the existence of a quality, unless the purpose of the guarantee of quality merely extends to the conformity of the underlying delivery with the Contract, but not to the risk of consequential damages caused by defects. The above provisions do not entail a change in the burden of proof to the detriment of the Customer.

§ 11 Joint and Several Liability

1. Liability for damages over and above the liability provided in § 10 is excluded regardless of the legal nature of the claim asserted, particularly claims on account of a breach of duties arising from the obligatory relationship and claims arising out of an unlawful act.
2. The exclusion of liability under subcondition 1 above does not apply to claims pursuant to the Produkthaftungsgesetz [Product Liability Act] and in cases of damage to a person's life, body or health.
3. In so far as SAERTEX's liability is excluded or limited, this also applies to the personal liability of employees, workers, staff members and representatives of SAERTEX as well as persons employed by SAERTEX to perform an obligation.

§ 12 Reservation of Title

1. SAERTEX shall reserve the title to the purchase item until it has received all payments arising from the business relationship with the Customer. The reservation of title shall continue to apply, even if individual accounts receivable of SAERTEX are included in running accounts and the balance has been made and accepted.
2. The Customer shall be obliged to handle the purchase item with care. In particular the Customer shall be obliged to adequately insure the purchase item at its own expense against fire damage, water damage and theft at the replacement value.
3. The Customer shall without delay give SAERTEX written notification of levies of execution and any other seizure by third parties, so that SAERTEX can file suit pursuant to Section 771 ZPO [Code of Civil Procedure]. In so far as the third party is unable to reimburse SAERTEX for court costs and out-of-court costs in connection with a lawsuit pursuant to Section 771 ZPO [Code of Civil Procedure], the Customer shall be liable for the loss incurred by SAERTEX.
4. The Customer shall be entitled to resell the purchase item in the normal course of business. However the Customer already now assigns to SAERTEX all claims, in the sum of the final invoiced amount (including VAT) of SAERTEX's claim, that accrue to the Customer out of the resale against its customers or third parties, irrespective of whether or not the purchase item was resold without having been processed or after having been processed. The Customer shall also remain empowered to collect these claims after the assignment. Nothing herein shall affect the right of SAERTEX to collect the claim itself. However SAERTEX undertakes not to collect the claim as long as the Customer meets its obligations to pay out of proceeds received, does not default in payments and in particular a petition for insolvency proceedings has not been filed or the Customer has not ceased payments. If this is the case however, SAERTEX may demand that the Customer informs it of the assigned claims and their debtors, provides it with all information necessary for collecting the claims, hands over related documents and informs the debtors (third parties) of the assignment.
5. Processing or transforming of the purchase item by the Customer shall always be undertaken for SAERTEX. If the purchase item is processed with other items not belonging to SAERTEX, SAERTEX shall acquire joint ownership of the new item in the proportion of the value of the purchase item (final invoiced amount including VAT) to the value of the other processed items at the time of processing. In all other respects the conditions applicable to the purchase item delivered under reservation of title shall be applicable to the items created by processing.
6. If the purchase item is inseparably mixed with other items belonging to SAERTEX, SAERTEX shall acquire joint ownership of the new item in the proportion of the value of the purchase item (final invoiced amount including VAT) to the value of the other mixed items at the time of mixing. If mixing is undertaken in such a manner that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer shall transfer to SAERTEX joint ownership rights pro rata. The Customer shall hold in safekeeping for SAERTEX the sole property or joint property created in such manner.
7. At the request of the Customer SAERTEX shall be obliged to release collateral security to which SAERTEX is entitled, in so far as the realizable value of SAERTEX's collateral security exceeds the claims to be secured by more than 10 %. SAERTEX shall be responsible for selecting the collateral security to be released.
8. If the reservation of title is not effective under the law of the country where the delivered goods are located, the Customer shall at the request of SAERTEX provide collateral security of equal value. If the Customer fails to comply with this request, SAERTEX may demand that all outstanding accounts be immediately paid, irrespective of agreed payment periods.