

General Terms and Conditions of Delivery, Sale, and Repair



General Terms and Conditions of Delivery, Sale and Repair ("Terms and Conditions of Delivery")
of AIRTEC Controls GmbH, 61476 Kronberg, Germany.

1. Scope

1.1 All contracts, deliveries, repair services and any other services rendered are governed solely by these Terms and Conditions of Delivery, even if we do not expressly state this fact. All future contracts between us and the customer shall be based on these Terms and Conditions of Delivery.

1.2 Any General Terms and Conditions (Terms and Conditions of Purchase) of the customer shall apply only if they have been expressly acknowledged by us in writing. This shall also apply if the customer refers to his General Terms and Conditions in the order and if we provide deliveries and services in knowledge of the customer's General Terms and Conditions without objecting them.

2. Offers, Orders

Our offers are subject to change. Orders placed and verbal agreements entered into shall only be binding upon us if and in so far as we have confirmed these in writing or if we comply by making delivery or providing the services.

3. Pricing and Packing Charges

3.1 Our prices for deliveries are quoted ex-works, plus packaging and statutory value-added tax at the rate applicable on the date our service is provided. All prices are quoted in Euro (€).

3.2 Packaging will be charged at cost, and used packaging materials may not be returned to us.

4. Quality

Goods supplied by us shall conform to our product descriptions and any specifications agreed upon. Product features that the customer can reasonably expect from the products supplied by us following any published claims on our part or on the part of our agents, in particular in advertisements or incorporated in the labelling of our products or on the basis of general commercial usage, shall only be deemed to constitute contractually agreed qualities if we expressly confirm this in our offer or any written confirmation of order. Warranties shall only be binding upon us if we have defined them as such in a binding offer or a written order confirmation and if such written documents also detail our obligations under the warranty.

5. Deliveries and Passage of Risk

5.1 Part deliveries shall be admissible to a reasonable extent.

5.2 The risk shall pass to the customer no later than upon delivery to the forwarding agent or any other party commissioned with the transportation of the goods; this also applies in the case of shipments from the same location, part deliveries and if we are the party handling the transportation and installation. Unless we have received specific instructions to the contrary, we shall determine the method of shipment at our discretion.

5.3 At the customer's request, transit insurance may be taken out at the customer's expense.

5.4 All delivery dates are non-binding, unless expressly declared by us as binding in writing. A binding delivery date is deemed to have been complied with if the products have been dispatched from the supply works or if we have advised the customer that the products are ready for delivery by that date. The delivery period shall be extended by a reasonable period in the event of any measures as part of industrial disputes, in particular strike action and lawful lockout, as well as in the case of any unforeseen impediments beyond our control. This shall apply analogously if any of these circumstances arise for our sub-suppliers. Said circumstances are deemed to be beyond our control even if they occur within the period of any existing delay. We shall notify the customer of the commencement and cessation of all such circumstances as soon as possible.

5.5 In the case of non-binding delivery periods, we shall be deemed to have entered into default upon written demand by the customer which may be made not earlier than one month after expiration of our non-binding delivery period.

5.6 The limitations pursuant to Section 10 hereunder shall apply analogously to any liability for default on our part.

5.7 If the customer fails to pick up any product to be picked up by the customer on the contractually agreed delivery date or if he does not accept a contractual product sent by us on the contractually agreed delivery date in compliance with the contract, he shall enter into default of acceptance. In the case of a non-binding delivery date, we shall be entitled to advise the customer of any product to be picked up by him being ready for pick-up giving him two weeks' notice; should the customer fail to pick up the products on this date or fail to accept the goods to be sent on the advised date, he shall enter into default of acceptance. Pick-up of products to be picked up and taking delivery of products to be sent in accordance with the contract are deemed principal contractual obligations.

6. Payments, Default in Payment, Set-off, Retention

6.1 Unless otherwise agreed, all our invoices fall due immediately and are payable within 30 days from the invoice date without any deductions.

6.2 We only accept bills of exchange if this has been expressly agreed. Acceptance of bills shall be without obligation as to the timely production of any protests against a bill of exchange and only subject to the customer being charged with all collection expenses. In the event of any default in payment and any well-founded doubts as to the customer's solvency and/or credit worthiness, we shall have the right to demand advance payment for any outstanding deliveries and to declare all other claims from our contractual relations with the customer as immediately due and payable. Our obligation to make delivery shall be suspended for as long as the customer is in default with any payments due. This shall also apply if a bill of exchange has been sent as payment.

6.3 The right of set-off or retention based on any counter claims of the customer, which are disputed by us or which have not been finally decided by a court of law, shall be excluded. The right of retention shall also be excluded where the customer's counter claims are based on a contract between the customer and us other than the one governed hereunder.

7. Breach of Obligations by the Customer

7.1 If, (i) in so far as a minimum quantity of products to be purchased by the customer has been agreed, the customer does not fulfil this minimum purchase obligation or (ii) the customer is in default in fulfilling an obligation in accordance with Section 5.7 hereunder, we reserve the right, subject to the provision in Section 7.3 hereunder, to claim lump-sum damages due to default of 0.5% of the price of the affected products for each week of the default, up to a maximum amount of 5% of the price of the affected products.

7.2 If the customer earnestly and definitively refuses to fulfil the agreed minimum purchase obligation or an obligation in accordance with Section 5.7 hereunder and/or to pay the price or if a reasonable period of grace is set and the customer nevertheless does not fulfil these obligations or does not fulfil them as contractually agreed within this period of grace, we reserve the right, subject to the provision in Section 7.3 hereunder, to claim lump-sum damages of 25% of the price of the affected products instead of the agreed services.

7.3 The customer shall be entitled to prove in the cases covered by Sections 7.1 and 7.2 hereunder that no damage or less damage has been incurred. We reserve the right to claim further damages.

8. Reservation of Title

8.1 We reserve title in all products supplied by us until all claims due to us at the time of delivery under our business relations with the customer, irrespective of the legal grounds on which they may be founded, have been paid in full ("goods under reserve").

8.2 As long as the customer duly meets his obligations arising out of the supply contract, he shall be entitled to dispose of the goods under reserve in the ordinary course of his business. The customer hereby assigns to us all claims due to him following a resale of the goods under reserve, including all subsidiary rights. Such claims assigned to us shall serve as collateral for our claims against the customer. We hereby accept any such claims being assigned to us.

8.3 As long as the customer duly meets his obligations arising out of this contract, he shall be entitled to collect the claims assigned to us himself. We have the right to demand that the customer inform us of any amounts assigned and pass on to us the names and addresses of the respective debtors; that he supply us with all collection-relevant information, submit to us all pertinent documentation, and advise the debtor of the assignment. We shall also have the right to disclose the assignment if we consider this to be necessary in order to secure our claims.

8.4 Apart from his right to resell our goods, the customer is not authorised to dispose of the goods under reserve in any other way, in particular to pledge or transfer the goods by way of security or to assign his debts with respect to the goods. He shall immediately advise us of any interference with our rights to the goods under reserve. If the customer defaults in his payments to us or breaches any duty relating to the contractual reservation of ownership or if we have any well-founded doubts as to his solvency, we have the right to rescind the contract, demand that the goods under reserve be surrendered and pick up the goods from the customer's premises. Such rescission shall not be subject to any notice periods. The costs for the surrender of the goods under reserve and any rescission shall be borne by the customer.

8.5 Our reservation of title and our rights in accordance with this Section 8 also extend to any new products created by processing of the goods under reserve. Such processing shall be deemed to have been carried out on our behalf as the manufacturer. If the goods under reserve are processed, combined or mixed with other materials, we shall acquire co-ownership in the new product in proportion to the value of the goods under reserve as originally invoiced, vis-à-vis the invoiced price of the other materials. In case of the end product being sold, the amount due to us shall be limited to the portion of our claim corresponding to the share of our co-ownership.

8.6 If goods under reserve are sold together with other products at a combined total price, the amount due to us shall be limited to the amount invoiced by the customer (including the statutory value-added tax) for the goods under reserve or, if we have acquired co-ownership in the product sold together with other products at a combined total price, to the portion of claim which corresponds to our share of co-ownership.

8.7 If the goods under reserve are combined with any pieces of real estate or movable property, the customer shall assign his own claims due to him in connection with his product combination, including all subsidiary rights, to us by way of security, without this requiring any further explanation.

9. Notice of Defects / Liability for Defects

9.1 The customer shall check whether the goods delivered comply with the contractually agreed quality and are suitable for use for the designated purpose. If such an inspection is not carried out, if the inspection is carried out less thoroughly than required, or if we are not notified of any obvious defects, including deviations in quantity or delivery of the wrong products, immediately after receipt of the product, the product in question shall be deemed to have been accepted in respect of the said defects. Hidden defects shall be deemed to have been accepted if we have not been notified accordingly immediately after their detection and at the latest within 12 months after having been delivered from the shipping point. Externally visible transport damage shall be declared immediately; transport damage that is discovered only when the transport packaging is removed shall be declared within 3 days of the delivery. Notices of defects shall be lodged and substantiated in writing, including all order details and the invoice number.

9.2 We shall redress all notices of defects duly lodged and substantiated either by removing the defect or by making substitute delivery with a defect-free product at our discretion. If the goods supplied by us have been processed or modified or if a return of the goods is impossible for any other reasons, the provisions pursuant to § 346 Para. 2 and 3 of the German Civil Code shall apply.

9.3 If we are unable to remove the defect or supply a defect-free product, if the costs for this are deemed unreasonable high, or if our endeavours to redress have ultimately failed, the customer has the right at his discretion either to withdraw from the contract or to demand diminution of the purchase price.

9.4 We accept no liability for defects or damage caused by any of the following circumstances, unless such circumstances can be attributed to our own negligence:

- Unsuitable or improper use or storage prior to initial operation;
- Processing or modification by the customer or a third party;
- Incorrect installation or commissioning by the customer or a third party or interference by an unauthorised third party;
- Normal wear and tear, incorrect or negligent handling, use of unsuitable operating material;
- Use of substitute materials
- Defective construction works
- Chemical, electrochemical or electrical impacts.

9.5 The onus of proof for proper usage, storage, installation and commissioning, handling, the identity of operating materials, defect-free construction works and the absence of chemical, electrochemical or electrical impacts rests with the customer.

9.6 The customer's warranty claims are subject to a period of limitation of 12 months from the date of delivery at the customer's works. This does not apply in the case of fraud, gross negligence, injury to life, limb and health nor if the product was used for a building or structure in a manner, it is ordinarily used and has caused damage to the building/structure.

9.7 §§ 478 and 479 of the German Civil Code shall apply to rights of recourse of our customers in the event that the products are sold to a consumer. In this case, the rights of recourse shall only apply as far as the customer has not entered into any agreement with his end customer that extends beyond the scope of his claims under the statutory warranty. The scope of any claims under a right of recourse shall be governed by the provisions under Section 10 hereunder.

9.8 All further warranty claims, irrespective of their nature, shall be excluded, subject to any limitations of damage claims as set forth under Section 10 hereunder.

10. Limitation of Liability

10.1 We accept liability only in the event of wilful intent and gross negligence on our part. We accept liability for ordinary negligence only in the event of damage that is attributable to breaches of cardinal duties in a manner that jeopardises achievement of the object of the contract or breaches of duties that must be fulfilled to enable proper execution of the contract.

10.2 Our liability for ordinary negligence shall be limited to any foreseeable damage typical for contracts such as between the parties. This shall also apply in the case of any grossly negligent violations by any of our vicarious agents (i.e. not our legal representatives or senior executives).

10.3 In the event of ordinary negligence, we accept no liability for indirect damage, consequential damage and loss of profit.

10.4 Claims for damages which are due to ordinary negligence or due to gross negligence by vicarious agents and which do not relate to defective goods and are therefore not subject to the period of limitation in accordance with Section 9.6 hereunder, shall become statute-barred after two years from the time the customer has detected the damage at the latest or, irrespective of any detection, after three years from the time the damaging incident had occurred at the latest.

10.5 The above limitations of liability do not apply to any statutory liability under the Product Liability Act, to cases of injury to life, limb or health, to damage occurring after having extended a warranty of fitness of the product and in the event of fraudulent concealment of defects. In all other respects, the aforementioned limitations of liability shall apply to all claims for damages, irrespective of the legal grounds on which they may be based, including claims based on actionable tort.

10.6 The above limitations of liability shall also apply in the event of any damage claims by the customer against our employees or agents.

10.7 These limitations of liability also apply to unascertained products of the same kind.

11. Takeback of Goods Delivered from Stock and Other Modifications of the Contract

11.1 Products supplied in accordance with the agreement shall be taken back by us only in individual cases as a gesture of goodwill and at our discretion. Products can only be taken back on a goodwill basis if they are standard catalogue items and if they still are in their original condition, i.e. they must not have been put into operation or modified. Moreover, the customer must bear the costs entailed by taking back the products, for example the costs of sending the products back; the purchase price shall be refunded subject to the retention of the following:

- 10 % of the product's list price, but at least a net amount of 20.00 Euro, if the product is still in its unopened original packaging;
- 20 % of the product's list price, but at least a net amount of 30.00 Euro, if the packaging has been opened, but the product is still in its original condition.

11.2 Our consent to modifications of the contract requested by the customer (including cancellations) shall likewise be given on a goodwill basis and at our discretion. Among other things, we shall make our consent conditional on the customer paying us reasonably for the costs we incur; allowance can be made here for the nature of the modification to the contract and the status of manufacture of the affected products.

12. Repairs or Other Work Services

12.1 We carry out orders for repair works not covered by Section 9.2 hereunder only if and in so far as we have sent our confirmation in writing. Delivery of equipment sent in for repair shall be sent carriage paid. We reserve the right to refuse acceptance of any consignments not sent carriage paid.

12.2 If work services have essentially been performed in accordance with the contract, the customer shall declare his acceptance of them in writing. Acceptance of work services shall be deemed as having been declared if the customer (i) does not declare acceptance of them 10 days after we have stated that they are ready to be accepted or, in the event of an agreed acceptance date, on said date, despite the fact that the work services have essentially been performed in accordance with the contract, or (ii) refuses to accept them for no adequate reason.

12.3 In all other respects, the above provisions shall apply accordingly to work services, with the proviso that invoices are submitted after acceptance, claims in accordance with § 637 German Civil Code remain unaffected, the 12-month period of limitation for warranty claims in accordance with Section 9.6 hereunder commences at the time of acceptance and that it shall not apply if the works are related to any buildings/structures or any planning and monitoring services for same.

13. Industrial Property Rights and Trademark Protection

13.1 We reserve all proprietary rights and copyrights in respect of all our offers and all attached documents, our preliminary cost estimates and all drawings and diagrams, irrespective of whether they have been attached to our offer, appear in catalogues or are stored on any electronic media or are incorporated in any other form. All such protected documents and data may be neither disclosed to any third parties nor used for business purposes without our prior consent and shall be immediately returned to us upon our request.

13.2 All protected trademarks or trademarks entrusted to us for our use may only be used in conjunction with products manufactured by the customer with our express written consent.

14. Miscellaneous

14.1 The place of performance for all deliveries and payments shall be Kronberg im Taunus, Germany.

14.2 Statements, in particular invoices, may also be transmitted electronically (§ 127 of the German Civil Code), unless otherwise agreed with the customer.

14.3 Amendments or modifications to an order and/or these Terms and Conditions of Delivery as well as any other agreements between the parties shall not be valid unless given in writing.

14.4 The exclusive place of jurisdiction shall be Frankfurt/Main, Germany. However, we also have the right to resort to the competent courts of law at the customer's place of jurisdiction.

14.5 All relations between our company and the customer shall be governed solely by the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

14.6 We hereby point out that all personal data obtained in regard to or in conjunction with the business relations between the parties hereunder, irrespective of whether they were obtained from the customer in person or via a third party, will be processed within the scope of the German Data Protection Act.

14.7 Severability: If any provision(s) of these Terms and Conditions of Delivery are held to be invalid or unenforceable, all remaining provisions hereof will remain in full force and effect.

Dated: May 2009