

# CONDOK GmbH - General Terms and Conditions of Business

## 1. Scope

The general terms and conditions of business of CONDOK GmbH (hereafter "CONDOK") apply exclusively to all consignments and services provided by CONDOK to the Purchaser. We cannot accept any contrary or conflicting terms and conditions of business that may be used or issued by the Purchaser. No supplementary verbal agreements were made. Terms that are divergent or supplementary to those contained in CONDOK's General Conditions of Business must set down in writing. Unless otherwise agreed, any such terms will only apply to the individual case at hand.

## 2. Conclusion of Agreement

2.1 CONDOK's quotations are non-binding, unless their binding force has been stipulated in the tender document. A contract is only deemed to have come into force either when an order has been accepted in writing, an order confirmation has been issued, or when the order has been fulfilled.

2.2 CONDOK's sales representatives do not have power of attorney. The written confirmation of order determines the content of the contract, where such a confirmation exists.

2.3 CONDOK reserves the right to rectify at any time errors in its quotations, invoices and communications, such as typing errors and miscalculations, and the results deriving therefrom.

## 3. Ownership, Copyright

3.1 We reserve the right to retain title and copyright to all illustrations, drawings, cost estimates and other documents such as technical documentation, drafts and translations. CONDOK retains all rights of use of all documents and data storage devices delivered, unless otherwise agreed. Any deviation from the above must be agreed in writing.

3.2 The Purchaser warrants upon placing the order, that he or she is in possession of all copyright and/or rights of use (reproduction and adaptation rights) for the material consigned to CONDOK for development. Should the rights of a third party nevertheless be violated by CONDOK when carrying out the order issued to it by the Purchaser, the Purchaser agrees to indemnify CONDOK against all claims by third parties including any costs incurred in relation to legal disputes.

## 4. Delivery and Transfer of Risk

4.1 The start of the delivery time specified by CONDOK shall depend upon the prior clarification of any technical issues outstanding.

4.2 Our compliance with these delivery commitments is also subject to the Purchaser fulfilling his or her own obligations in a timely and proper manner. This applies particularly to the fulfilment of his or her cooperation obligations. We reserve the right to plead non-performance of contract.

4.3 Should the Purchaser fail to accept delivery or if he or she culpably infringes any other duty to cooperate, CONDOK will be entitled to demand compensation for any resultant losses. We reserve the right to pursue other claims.

4.4 Part deliveries are permissible. CONDOK is also entitled to make delivery before the agreed date. Should CONDOK be prevented from meeting its agreed supply commitments for reasons that were not foreseen at the time of concluding the contract, for example force majeure, natural disasters, industrial action, regulatory or official intervention, unforeseeable disruption to operations, unforeseeable delays to deliveries by primary suppliers or for any other similar reason, then the commitment to supply will be suspended for the duration of the impediment and within the limits of its effect. Should delivery be delayed temporarily or become impossible, CONDOK must immediately notify the Purchaser in writing and give reasons. Should the suspension of the supply commitment be unacceptable to the Purchaser, then he or she is entitled to withdraw from the contract after expiry of a reasonable deadline, which shall be set by him or her. The setting of a deadline is not required under law in the cases set out in the German Civil Code, § 323 para. 2 and. 4, § 326 para. 5. CONDOK cannot be held liable for non-delivery or late delivery for any of the reasons mentioned above. Any claim for compensation for loss or disbursement is excluded. If a partial delivery of goods or services has been made, then the Purchaser may only withdraw from the entire contract, if he or she has no further interest in the instalment already received.

4.5 All risk passes to the Purchaser as soon as the goods have been transferred to the company responsible for transportation. CONDOK will take out transport insurance cover for inland deliveries – unless otherwise agreed – which will however only provide limited cover in case of transportation carried out in the service of the Purchaser.

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## 5. Prices

- 5.1 All prices are in Euros, plus VAT at the statutory rate. The costs for packaging, transport and transport insurance are not included in the price and will be invoiced separately.
- 5.2 Should it become apparent during the course of work on the order, that CONDOK will incur additional work and expense resulting from changes and additions made to the contract by the client after the contract was agreed, then CONDOK is entitled to invoice for this additional work in line with current hourly rates. CONDOK will notify the Purchaser as soon as, in its estimation, additional work or expense is likely to be incurred as a result of changes to the scope of works.

## 6. Terms of Payment

- 6.1 Unless otherwise agreed, for hardware and systems a third of the agreed price plus the apportionable VAT is due for payment upon receipt of the order confirmation, a further third upon readiness for despatch, and the remainder of the price plus all additional costs (freight, packaging, insurance) immediately after delivery and issuing of the invoice. Payment must be made within 14 days from date of invoice.
- 6.2 For all other goods deliveries, payment must be made within 14 days of date of invoice in accordance with the contract.
- 6.3 Cheques and drafts will only be accepted as payment, and the latter only with special agreement by CONDOK, if discount charges, stamp duty, encashment charges and other charges and fees are paid by the Purchaser.
- 6.4 In the case of late payment by the Purchaser, CONDOK is entitled to levy late payment interest at a level of 5% p.a. above the base rate (Section 247 of the German Civil Code). We reserve the right to make additional claims for compensation.
- 6.5 Should it become apparent after a contract has been agreed with the Purchaser, that the Purchaser's ability to meet claims for payment is restricted, in particular due to lack of creditworthiness, then CONDOK is entitled to demand immediate collateral security or cash payment, strictly net, for all services already provided and advance payment for all services yet to be provided under the contract, and/or to hold back any goods or services that have not already been provided. Should the Purchaser not comply with the above obligations in due time, then CONDOK is entitled to refuse to

provide the service or goods and withdraw from the contract, and to make claim for damages.

- 6.6 The Purchaser may only offset undisputed or judicially determined counter claims. The Purchaser is only entitled to assert a right of retention as a result of counterclaims resulting from the same contractual relationship, and not from any other.

## 7. Purchaser's Duty of Cooperation

- 7.1 The Purchaser must provide all documents and information necessary for CONDOK to properly deliver the documentation or other service required immediately after placing the order. This applies particularly to the provision of comprehensive product information including construction documents, diagrams, development documents and a risk analysis. In addition, the Purchaser is responsible for ensuring that CONDOK is aware of all guidelines, standards or other legal requirements to be observed for the drafting of documentation.
- 7.2 These cooperation duties are fundamental duties of the Purchaser.

## 8. Requirement to Inspect the Goods and Report Defects

- 8.1 Initially, a draft or test sample of the item of sale to be produced by CONDOK will be forwarded to the Purchaser. The Purchaser must inspect and verify this sample / draft very carefully with respect to discernable faults and other changes and / or additions that he or she may require, and notify these to CONDOK without delay.
- 8.2 CONDOK will produce a final copy of the item on the basis of the draft/sample corrected by the Purchaser.
- 8.3 Should the Purchaser not comply in a timely manner with his or her inspection, verification and defect reporting obligations as described in (1) above, then he or she will not be able to make a future claim against CONDOK for any issues which can be traced back to this delay.

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## 9. Rights in the Event of Provision of Faulty Goods

- 9.1 Claims by the Purchaser relating to defects may only be made if the Purchaser has properly fulfilled his or her obligations in accordance with Section 377 of the German Civil Code relating to inspection and reporting of defects.
- 9.2 CONDOK guarantees to provide goods or items that are in a fault-free condition and comply with the best available technology at the time of concluding the contract. Should a fault be discovered in the goods provided, the Purchaser is entitled to receive rectification either in the form of repair to the item or provision of a new, fault-free item, at CONDOK's option.
- 9.3 Should the rectification fail, be unacceptable to the Purchaser, or should CONDOK refuse seriously and definitely to provide the goods or service, then the Purchaser, at his option, may lower the price or withdraw from the contract. Liability for compensation is limited as per (10) below. This also applies to claims for reimbursement of expenses.
- 9.4 All claims deriving from the defectiveness of the goods or services provided, including possible claims for compensation, become time-barred one year from date of delivery, or if an acceptance inspection is required, from the date of the acceptance inspection, except in the case of deliberate acts and omissions. This applies also for possible competing congruent claims for compensation arising from non-contractual liability.
- 9.5 CONDOK cannot accept any responsibility for damages, which arise from the Purchaser either failing to fulfil his or her duty of cooperation as per (7) above, or failing to comply with his or her obligation to inspect the goods and report any defects as per (8) above.
- 9.6 In addition, CONDOK cannot accept any responsibility for damage caused by an article of sale that was produced/modified by a third party without CONDOK's approval, and where the fault cannot be demonstrably be traced back to a mistake made by CONDOK.

## 10. Liability for Damages

- 10.1 CONDOK will only accept liability for damages, no matter what the cause in law, in the case of deliberate acts and omissions or gross negligence on the part of its agents or assistants. The preceding exclusion of liability for ordinary negligence does not apply to a breach of intrinsic contractual duties. In cases of a breach of intrinsic contractual duties, liability is limited to typically occurring, foreseeable risks.
- 10.2 Claims for damages arising from contractual liability other than detailed in (9) above, become time-barred one year from date of delivery, except in the case of deliberate acts and omissions. This also applies for congruent competing claims for compensation arising from non-contractual liability.
- 10.3 Liability for damages arising from guarantees provided by CONDOK as well as that under the German Product Liability Act remains unaffected by the preceding provisions. The same applies to claims arising from death or injury to body or health.
- 10.4 CONDOK cannot accept any obligations in respect of market and/or product observation for products, for which services in the form of documentation, instruction manuals etc. have been supplied.
- 10.5 Material-related colour and sound deviations from the master template do not constitute grounds for a claim. The Purchaser undertakes to ensure, that the original data storage device for electronic data that were submitted to CONDOK during the allocation of orders, will always remain in his possession. CONDOK cannot be held liable for a possible loss of data, should the Purchaser contravene this obligation.

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## 11. Retention of Title

11.1 CONDOK retains title to the goods or services provided until all outstanding accounts in relation to the business relationship with the Purchaser have been settled in their entirety.

11.2 The Purchaser is entitled to develop, manipulate or re-sell the items in the course of his proper business. Processing of articles of sale that are subject to title will be carried out on behalf of CONDOK, without any resulting obligation. In the case of processing, combination, intermingling or mixing of goods subject to title with others that do not belong to CONDOK, CONDOK is entitled to a share of ownership in the resulting product in proportion to the objective market value (final invoice amount inclusive of VAT) of the goods subject to title delivered by CONDOK in relation to the value of the other goods at the date of the processing, combination, intermingling or mixing. Should the Purchaser acquire sole proprietorship of the goods, then both Parties hereby agree, that the Purchaser will assign a share of ownership to CONDOK in proportion of the objective market value (final invoice amount inclusive of VAT) of the goods subject to retention of title in relation to the value of the other goods at the date of the processing, combination, intermingling or mixing and that he or she will retain these goods for CONDOK free of charge in his or her safekeeping. Should the goods be in the possession of a third party, the Purchaser hereby transfers his claims to these, and in particular his claims for surrender, to CONDOK. CONDOK agrees to this transfer.

11.3 The Purchaser hereby agrees to transfer, as a security, all receivables resulting from the resale of goods subject to title, to the seller, until the complete payment of all current and future receivables owing to CONDOK as a result of the business relationship with the Purchaser has been effected. Should goods that are partly owned by CONDOK be resold, the transfer of receivables will be effected on a pro-rata basis relative to CONDOK's share in the ownership. Said party agrees to this transfer. If CONDOK so requests, the Purchaser must notify his customer of this transfer.

11.4 The rights of the Purchaser to free disposal over the goods subject to reservation of title or the transferred goods and rights, and in particular to their processing, remodelling, processing, combination, intermingling, mixing, resale or collection shall be forfeited, if the Purchaser should fall into financial difficulties, or threatens to do so, or if CONDOK revokes its assent to this free disposal or collection because of conduct contrary to the terms of the contract which may jeopardise CONDOK's interests (especially default of payment) on the part of the Purchaser. Should CONDOK's security interests be compromised or put at risk by a third party, the Purchaser is obliged to notify CONDOK without delay.

11.5 CONDOK may, as a matter of principle, after the setting of a deadline for payment by the Purchaser, withdraw from the contract and demand return of any processed or remodelled goods that are subject to title, if the Purchaser acts in any way contrary to the terms of the contract, in particular if he or she falls into payment arrears. The assertion of title, in particular claims for restitution and the distraint of goods subject to retention of title by CONDOK will be regarded as withdrawal from the contract.

## 12. Place of Jurisdiction and Performance

12.1 Place of performance for all obligations arising from the contractual relationship is CONDOK's registered office.

12.2 Place of jurisdiction for all legal disputes arising from the contractual relationship is Kiel, provided the Purchaser is a merchant / trader, legal entity under public law or a special estate governed by public law. This jurisdiction agreement shall also apply if the Purchaser has no general place of jurisdiction within Germany.

12.3 The Statute of the Federal Republic of Germany shall apply to this contractual relationship.

12.4 Should any individual part of the preceding terms and conditions of business become ineffective or be waived, then the effectiveness of the remaining provisions remains unaffected. The parties to the contract are obliged to replace any ineffective provisions with effective ones, which correspond as closely as possible to the ineffective provisions in terms of meaning, purpose and economic effect.