

General Terms and Conditions GTCs

JUMO Meß- und Regelgeräte Gesellschaft m.b.H.

Legal venue: Vienna, place of performance: Vienna

Company register number: 124393 g, Vienna Commercial Court, DVR 0143791

Vat no.: ATU15069903, ARA Licence no.: 268-AS 183131312

Bank details: BA-CA AG, sort code 11000, account: 0046-36320/00

IBAN code: AT70 1100 0004 6363 2000 BIC: BKAUATWW

1. Scope

1. The general terms and conditions (hereinafter Seller's GTC) shall apply to all of Seller's deliveries and services as last amended.
The following terms shall apply without exception to all deliveries and services, including future contracts. Terms and conditions of any kind, in particular conditions of purchase, that contradict the present general terms and conditions for deliveries and services, are entirely without legal effect, regardless of whether, when and how they were brought to our attention. Failure to respond to Ordering Party's terms and conditions or conditions of purchase shall by no means be construed to imply their approval.
Any Supplier's general terms and conditions to the contrary are expressly excluded. Discrepancies in order confirmations shall apply only if expressly approved. Execution of the order shall be deemed as acceptance of these conditions of purchase.
2. Provided software is license software, i.e. software that has not been developed by Seller, but that has been licensed for Seller by a third party (hereinafter "Licensor"), e.g. JUMO GmbH. & Co KG or other Licensors. In this case, the Licensee shall receive the conditions provided with the software; these shall have priority over the provisions of the present GTC.
3. Any derogation from the present GTC shall require Seller's written approval. Any changes must be made in writing.
4. New versions of the GTC constitute an integral part of the agreement unless Buyer objects to them in writing within 14 calendar days from receipt.
5. If the present GTC or the documents pertaining to the order and technical descriptions are translated, the German version shall prevail.
6. Furthermore, the delivery terms and software terms, both published by the Association of the Austrian Electrical and Electronics Industries, shall apply secondarily, provided they do not contradict the present GTC. These delivery terms and software terms are available for download on the association's website at www.feei.at.

2. Offer

1. Seller's offers are without obligation.
2. Offer and project documents shall be returned immediately at first request if the purchase order or order is placed elsewhere.

3. Contract conclusion

1. The contract becomes effective when Seller sends or delivers a written order confirmation following receipt of an order.
2. The details of the service owed are set out in the order confirmation. Subsequent changes must be made in writing and require Seller's approval.

4. Prices

1. All prices shall be without obligation, in EURO, unless another currency has been agreed on.
2. Prices are ex-works, under INCOTERMS 2010, exclusive of value-added tax, packaging, shipment, disassembly, redemption and proper recycling and disposal of electrical and electronic equipment for commercial purposes in accordance with the Waste Electrical and Electronic Equipment Ordinance. Inner packaging shall be charged and not taken back.
3. Any charges, taxes or other fees for delivery shall be borne by Buyer who will hold Seller harmless and indemnify Seller in the event of a claim.
4. Minimum order value: equipment on store EUR 100; production equipment EUR 250. In the case of very low-price serial products, Seller reserves the right to deliver and invoice a minimum quantity, regardless of the order placed. For manufacturing reasons, excess or short deliveries in the range of +/- 5% may occur in the case of the products concerned; such excess or short delivery must be accepted and paid.
5. Seller may at any time request Buyer to provide an irrevocable bank guarantee from a first-rate Austrian bank, renewable anytime at first request, valid for at least six months, as security for the total purchasing price. Failure to comply shall entitle Seller to withdraw from the contract immediately.
6. In the event that orders differ from the offer, Seller shall expressly reserve the right to modify prices.
7. The offered prices are based on raw material prices at the time of the offer. In the event of changes, Seller is entitled to amend prices at any time.
8. Expenses for preparing maintenance, assembly and repair offers or assessments, shall be invoiced to Buyer.
9. Maintenance, assembly and repair orders are invoiced by Seller based on the services actually provided.

5. Delivery

1. The delivery period shall commence upon the complete fulfilment of all technical, commercial and other requirements incumbent on Buyer.
2. Seller shall be entitled to make and invoice partial deliveries.
3. Where on-call delivery has been agreed upon, goods will be deemed called one year after they were ordered at the latest.
4. In the event of unpredictable circumstances or circumstances beyond Seller's control, such as all cases of force majeure, that impede or prevent compliance with the agreed delivery date, such delivery date shall be deemed extended at least until such circumstances end; including for example, and without claim to comprehensiveness, natural catastrophes, armed conflicts, regulatory interventions and prohibitions, transport and customs delays, transport damage, energy and raw material shortages, labour disputes, and the loss of an essential subcontractor who is difficult to replace. The above-mentioned circumstances also justify an extension of the delivery period if they affect Seller's subcontractors.
5. If Buyer refuses acceptance of the delivery, Seller shall be entitled to withdraw from the contract and Buyer shall agree to pay a penalty which cannot be reduced by court order, in addition to the purchase price.
6. A penalty explicitly requires written agreement. Any delay in performance for which Seller is demonstrably and exclusively responsible, shall, unless otherwise agreed, entitle Buyer to claim liquidated damages for every full week of delay, amounting to a maximum of 0.5%, but not exceeding a total of 5% of the value of such part of the relevant complete delivery, provided that Buyer has suffered demonstrable damage corresponding to this amount. Any additional claims are excluded.
7. Returned goods that were ordered and delivered shall not be accepted.

6. Transfer of risk and place of performance

1. Risk and ownership shall transfer to Buyer EXW under INCOTERMS 2010, regardless of the pricing agreed for the delivery or service. This also applies if the delivery or service is effected as part of an assembly order or if Seller organises, manages or carries out the transport.
2. If delivery is delayed as a result of circumstances which are outside Seller's responsibility (cf. item 5.4.), the risk shall be transferred to Buyer on the date the goods are ready for shipment.
3. Seller shall be entitled to insure against transportation risk. Apparent and obvious transportation damage must be reported to the forwarder immediately upon receipt and communicated to Seller with the carrier's written confirmation. If such confirmation is not received within 5 calendar days, Buyer's claims for indemnification shall be excluded.

7. Payment

1. Payment must be made promptly and net.
2. Bills of exchange and cheques shall only be accepted as undertaking to pay. Seller shall be free to decide on any possible acceptance. Buyer shall be responsible for any costs and bank charges.
3. Payment shall be deemed effected on the date on which the amount is at Seller's free disposal.
4. If Buyer is overdue with any payment obligation or other obligation arising from this or other transaction, without prejudice to Seller's other rights, Seller reserves the right to
 - a) postpone the fulfilment of Seller's own obligations until this payment has been made or any other obligation has been fully met and to claim an appropriate extension of the delivery period, resulting from Buyer's default.
 - b) request the immediate payment of all still unpaid receivables from this or any other transaction and to charge default interest amounting to 1.5% per month plus turnover tax for these amounts, as of the respective due date, regardless of any additional claims.
 - c) to withdraw from the contract after granting a grace period.
5. In any event, Seller shall be entitled to invoice any pre-litigation costs, in particular reminder fees and legal fees, which Buyer engages to pay.
6. All deliveries shall remain Seller's property until full payment has been made. Buyer shall herewith transfer to Seller any receivables due to the resale of goods subject to retention of title, even if they are processed, transformed or combined with other commodities, to secure the latter's purchase money claim and Seller shall acquire co-ownership and Buyer shall undertake to make a corresponding note in Buyer's business records or on Buyer's invoices. Upon request, Buyer shall notify the assigned claim and the debtor to Seller and to make all information and documents available for the collection of the receivables and to notify the assignment to the third-party debtor. In the event of any attachment, bankruptcy or other claim, Buyer shall engage to point out Seller's retention title and to inform Seller thereof immediately. Seller shall be entitled to a right of selection. In the event of non-compliance with or non-transfer of ownership, Buyer agrees to pay a penalty in the amount of the selling price which cannot be reduced by court order, regardless of the claims arising thereafter.
7. Buyer shall not be entitled to withhold payments due to warranty or compensation or other claims or to offset payments against Seller's claims.

8. Guarantee

1. The guarantee is limited to the details of the service set out in the order confirmation (cf. 3.2). No warranty claims shall be accepted for obvious defects that could have been identified by Buyer prior to installation or processing, such as harm caused by defect or consequential harm caused by defect. Complaints concerning partial shipments do not entitle Buyer to refuse as yet undelivered partial deliveries.

2. The warranty period shall be 12 months. This also applies to deliveries supplied and services rendered that are firmly attached to a building or to the ground. The term of the warranty period shall begin at the time of transfer of risk under item 6.
3. Buyer shall be obliged to provide notification of deficiencies or defects immediately, in writing and fully, by communicating appropriate, clear reports, data, etc. Buyer shall participate in the establishment of the cause of the defects or damage and to contribute to their remediation and, upon request, to provide complete records, measurement results etc. The communicated documents, records, etc. shall be evaluated within a reasonable period of time. In the event of a defect under warranty in accordance with item 8.1., Seller shall have the option to replace the defective goods or defective parts thereof or else to repair them on Buyer's premises or have them returned for repair, or to grant a price reduction.
4. Ancillary costs incurred during remediation and establishment of defects (such as e.g. for assembly and disassembly, transport, disposal, travel and travel time) shall be paid by Buyer. If work under warranty is performed on Buyer's premises, the required auxiliary staff, lifting devices, scaffolding and incidentals, etc. shall be provided free of charge. Replaced parts shall become Seller's property and must be returned on request.
5. Buyer shall hold liable for the accuracy and completeness of Buyer's data and shall hold Seller harmless and indemnify Seller in the event of the violation of commercial protection and copyrights.
6. Warranty for the replacement of parts that are subject to natural wear and tear, shall be excluded. Warranty for used products shall be excluded.
7. All and any warranty claims shall be excluded if any amendments, repairs, etc. are made by Buyer or a third party, without Seller's written approval.
8. Buyer's warranty claims in the event of repair and maintenance orders shall be limited to the commissioned service and replaced parts in accordance with item 8.2.
9. In the event that products are returned for defect, repair or maintenance, Buyer shall comply with the Austrian Chemicals Act as amended. Buyer engages to package and label equipment or parts that are filled with hazardous substances or that have, in any way, come into contact with such substances in compliance with statutory provisions. Buyer shall make explicit reference in the maintenance agreement to the connection of the equipment with hazardous substances under the Austrian Chemicals Act, if necessary, enclosing a safety data sheet pursuant to regulation (EG) Nr. 1907/2006, Article 31. In the event of violation of these obligations, Buyer shall hold harmless and indemnify Seller. If equipment was delivered by third parties, acceptance of a maintenance or repair order in connection with hazardous substances may be declined.
10. In any event, before the job can be handled, Buyer shall communicate a "Declaration of Decontamination" signed by an authorised signatory.
The "Declaration of Decontamination" is available for download at www.jumo.net.
11. Buyer shall hold completely harmless and indemnify Seller for any and all infringements and damages, including non-compliance with statutory provisions.

9. Withdrawal from the contract

1. Buyer shall be entitled to withdraw from the contract if
 - a) performance, acceptance, beginning or continuing of the service is not possible or delayed, due to circumstances for which Buyer is responsible or if performance is further delayed, despite the granting of a reasonable period of grace.
 - b) changes to Buyer's personal or financial circumstances become subsequently known, e.g. payment stop, bankruptcy proceedings, insolvency proceedings, inaccurate information, etc.; this entitles Buyer to withdraw from the contract or to establish new requirements (up-front payment, payment prior to delivery), if concerns have arisen related to Buyer's solvency and Buyer fails both to make up-front payment or to provide adequate security prior to the delivery.
 - c) the delivery time is delayed by at least 6 months due to circumstances under item 5.4.
2. Withdrawal from the contract for the reasons above shall also be possible in respect of any outstanding part of the delivery or service (cf. 7.4 c).
3. Payment of deliveries already made or for partial performance shall become due and payable immediately upon withdrawal (cf. 7.4) In the event of withdrawal due to circumstances for which Buyer is responsible, Buyer agrees, regardless of further claims, to pay a penalty which cannot be reduced by court order, in the amount of at least 20% of the contract value, at least however, €1,000. This also applies to deliveries, services or partial deliveries Buyer has not yet accepted and to preparatory work carried out by Seller.
4. Buyer claims from the justified withdrawal of Seller shall be excluded.

10. Seller's liability

1. Liability depends on the fulfilment of all Buyer's contractual obligation.
2. Seller shall be liable for damage outside the scope of the Product Liability Act only to the extent that the relevant damage is proved to be due to wilful intent or gross negligence on Seller's side, within the limits of statutory provisions. Seller's/Agent's liability in cases of slight negligence, compensation for consequential damages, financial loss, not realised savings, loss of interest, loss of data, and damage from third-party claims shall be excluded.
3. Seller's/Agent's liability shall be excluded in cases of
 - a) non-compliance with Buyer's contractual obligations and non-compliance with the GTC.
 - b) non-compliance with installation and operating instructions.
 - c) infringement of local regulatory certification requirements.
 - d) infringement of national requirements relating to applicable European standards.
 - e) immaterial damages, consequential losses or lost profit.
 - f) damages from the loss of data and programmes and their restoration. Buyer shall be responsible for backups.
4. In addition, liability regarding delivery and service for claims made against Seller by Buyer related to injury to persons and damage to property is limited to business liability insurance which currently amounts to EUR 1.5 million.

In detail, the combined limit applies to the following insurance risks

- a) EUR 800,000 for material damage due to environmental disturbances in Seller's company as a whole and liability for damages as a result of damages to the parts of immovables that are directly subject to processing, use or any other activity.
- b) EUR 200,000 for damages resulting from loading or unloading third-party vehicles, garaged vehicles belonging to employees and visitors, purely financial losses, activities on movables and the safekeeping of movables.
- c) EUR 200,000 for product liability.

This shall apply to the culpable causing of damage under item 10.1 and 10.2, with the exception of damage caused by slight negligence, for which claims shall be explicitly excluded. The limitation comprises all claims due to incorrect advice and/or representation or transferral. Seller shall be liable for services provided by third parties in connection with the provision of the agreed service only in case of fault through poor choice of such third party.

11. Industrial property rights and copyright

1. If Seller manufactures goods on the basis of design data, drawings, models or other specifications provided by Buyer, Buyer shall indemnify and hold Seller harmless in the event of any claims on the grounds of violation of proprietary rights.
2. Seller expressly reserves title to drawings, sketches, cost estimates and other documents attached to the offers and order confirmations. Buyer shall use them only for the agreed purpose and shall not duplicate them or make them available to third parties without Seller's approval. These documents and all copies made thereof shall be returned to Seller at first request. To the extent that these documents are subject to copyright protection, Seller also reserves the copyright to these documents.

12. Confidentiality

1. Buyer hereby irrevocably engages to keep in confidence all and any business and trade secrets made accessible or provided to Buyer in connection with or as a result of a business relationship or that become known to Buyer due to contact to third parties and not to make these accessible to third parties in any way without Seller's approval. In addition, Buyer agrees to use information on a strict "need-to-know" basis and only in the context of a concluded contract.
2. The confidentiality obligation shall remain in effect even after the business relationship has ended. In every case of violation, Seller shall be entitled to a penalty which cannot be reduced by court order, in the amount of at least 20% of the contract value, at least however, €5,000.
3. Advertisement and publications regarding Seller orders and Seller's inclusion into Buyer's list of references shall require Seller's previous written approval.

13. Severability clause

If a provision in these terms and conditions is or becomes completely or partially invalid, the validity of all other provisions shall remain unaffected. The contracting parties shall replace any legally ineffective or unenforceable provision with an effective and enforceable provision that most closely matches the aim and purpose of the legally ineffective and unenforceable provision.

14. Venue and applicable law

The exclusive place of jurisdiction for all disputes arising from the contract - including any with regard to its existence or non-existence - shall be the competent court at the place of Seller's headquarters, the District Court of Innere Stadt (Vienna City Centre). The contract shall be subject to Austrian law, excluding the referral rules and the provisions of the UN Sales Convention. The application of the UNCITRAL United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

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Version April 2013, valid from 01.06.2013**